UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 10-Q

(Mark One)

☒ **QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the quarterly period ended September 30, 2024

OR

☐ **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

Commission File Number 001-36075

EVOKE PHARMA, INC.

(Exact name of registrant as specified in its charter)

Delaware	**20-8447886**
(State or other jurisdiction of incorporation)	**(IRS Employer Identification No.)**
420 Stevens Avenue, Suite 230, Solana Beach, CA	**92075**
(Address of principal executive offices)	**(Zip Code)**

Registrant's telephone number, including area code: (858) 345-1494

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	**Trading symbol**	**Name of each exchange on which registered**
Common Stock, par value $0.0001 per share	EVOK	The Nasdaq Capital Market

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ☒ No ☐

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files). Yes ☒ No ☐

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company, or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company," and "emerging growth company" in Rule 12b-2 of the Exchange Act:

Large accelerated filer	☐	Accelerated filer	☐
Non-accelerated filer	☒	Smaller reporting company	☒
Emerging growth company	☐		

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act. ☐

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes ☐ No ☒

As of November 6, 2024, the registrant had 1,486,009 shares of common stock outstanding.

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PART I. FINANCIAL INFORMATION
Item 1. Financial Statements

Evoke Pharma, Inc.
Condensed Balance Sheets

	September 30, 2024 (unaudited)	December 31, 2023
Assets		
Current assets:		
Cash and cash equivalents	$ 11,339,032	$ 4,739,426
Accounts receivable, net of allowance for credit losses of $0	2,022,518	673,071
Prepaid expenses	146,704	885,040
Inventories	493,408	481,840
Other current assets	36,421	47,532
Total current assets	14,038,083	6,826,909
Deferred offering costs	115,488	241,637
Total assets	$ 14,153,571	$ 7,068,546
Liabilities and stockholders' equity (deficit)		
Current liabilities:		
Accounts payable and accrued expenses	$ 2,188,164	$ 1,711,778
Accrued compensation	590,634	1,324,010
Note payable	5,000,000	5,000,000
Accrued interest payable	1,987,637	1,612,295
Total current liabilities	9,766,435	9,648,083
Total liabilities	9,766,435	9,648,083
Commitments and contingencies		
Stockholders' equity (deficit):		
Preferred stock, $0.0001 par value; authorized shares — 5,000,000 as of September 30, 2024 and December 31, 2023; issued and outstanding shares — zero as of September 30, 2024 and December 31, 2023	—	—
Common stock, $0.0001 par value; authorized shares — 100,000,000 and 50,000,000 as of September 30, 2024 and December 31, 2023, respectively; issued and outstanding shares — 894,843 and 278,558 as of September 30, 2024 and December 31, 2023, respectively	89	28
Additional paid-in capital	131,985,913	120,859,873
Accumulated deficit	(127,598,866)	(123,439,438)
Total stockholders' equity (deficit)	4,387,136	(2,579,537)
Total liabilities and stockholders' equity (deficit)	$ 14,153,571	$ 7,068,546

See accompanying notes to these unaudited condensed financial statements.

Evoke Pharma, Inc.
Condensed Statements of Operations
(Unaudited)

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2024	2023	2024	2023
Net product sales	$ 2,654,186	$ 1,562,860	$ 6,941,042	$ 3,504,636
Operating expenses:				
Cost of goods sold	104,024	34,908	238,031	142,855
Research and development	11,677	—	16,322	159,347
Selling, general and administrative	3,824,142	3,131,389	10,697,128	8,745,407
Total operating expenses	3,939,843	3,166,297	10,951,481	9,047,609
Loss from operations	(1,285,657)	(1,603,437)	(4,010,439)	(5,542,973)
Other income (expense):				
Interest income	99,294	35,558	226,353	112,052
Interest expense	(126,027)	(126,028)	(375,342)	(373,973)
Total other expense	(26,733)	(90,470)	(148,989)	(261,921)
Net loss	$ (1,312,390)	$ (1,693,907)	$ (4,159,428)	$ (5,804,894)
Net loss per share of common stock, basic and diluted	$ (0.94)	$ (6.08)	$ (3.01)	$ (20.84)
Weighted-average shares used to compute basic and diluted net loss per share	1,399,882	278,558	1,381,703	278,558

See accompanying notes to these unaudited condensed financial statements.

Evoke Pharma, Inc.
Condensed Statements of Stockholders' Equity (Deficit)
(Unaudited)

	Common Stock		Additional Paid-In Capital	Accumulated Deficit	Total Stockholders' Equity (Deficit)
	Shares	Amount			
Balance as of January 1, 2024	278,558	$ 28	$ 120,859,873	$ (123,439,438)	$ (2,579,537)
Stock-based compensation expense	—	—	254,029	—	254,029
Issuance of common stock, Pre-Funded Warrants, Series A Warrants, Series B Warrants, and Series C Warrants net of issuance costs	427,886	43	6,172,580	—	6,172,623
Amendment and issuance of common stock from the March 2024 Amendment of Series B Warrants and Series C Warrants, net of issuance costs	9,967	1	1,229,873	—	1,229,874
Net loss	—	—	—	(1,579,820)	(1,579,820)
Balance as of March 31, 2024	716,411	72	128,516,355	(125,019,258)	3,497,169
Stock-based compensation expense	—	—	126,578	—	126,578
Issuance of common stock from cashless exercise of Pre-Funded Warrants	18,425	1	(1)	—	—
Amendment and issuance of common stock from the June 2024 Amendment of Series B Warrants and Series C Warrants, net of issuance costs	—	—	308,429	—	308,429
Net loss	—	—	—	(1,267,218)	(1,267,218)
Balance as of June 30, 2024	734,836	73	128,951,361	(126,286,476)	2,664,958
Stock-based compensation expense	—		131,587	—	131,587
Amendment and issuance of common stock from the September 2024 Exercise Price Warrant Amendment of Series A Warrants and Series C Warrants, net of issuance costs	24,509	3	2,532,446	—	2,532,449
Amendment and issuance of common stock from the September 2024 Amendment of Series B Warrants and Series C Warrants, net of issuance costs	51,062	5	370,617	—	370,622
Issuance of common stock from the exercise of Pre-Funded Warrants	84,436	8	93	—	101
Redemption of fractional shares due to reverse stock split	—	—	(191)	—	(191)
Net loss	—	—	—	(1,312,390)	(1,312,390)
Balance as of September 30, 2024	894,843	$ 89	$ 131,985,913	$ (127,598,866)	$ 4,387,136

	Common Stock		Additional Paid-In Capital	Accumulated Deficit	Total Stockholders' Equity (Deficit)
	Shares	Amount			
Balance as of January 1, 2023	278,558	$ 28	$ 119,731,764	$ (115,647,143)	$ 4,084,649
Stock-based compensation expense	—	—	284,572	—	284,572
Net loss	—	—	—	(2,243,070)	(2,243,070)
Balance as of March 31, 2023	278,558	28	120,016,336	(117,890,213)	2,126,151
Stock-based compensation expense	—	—	280,140	—	280,140
Net loss	—	—	—	(1,867,917)	(1,867,917)
Balance as of June 30, 2023	278,558	28	120,296,476	(119,758,130)	538,374
Stock-based compensation expense	—	—	281,758	—	281,758
Net loss	—	—	—	(1,693,907)	(1,693,907)
Balance as of September 30, 2023	278,558	$ 28	$ 120,578,234	$ (121,452,037)	$ (873,775)

See accompanying notes to these unaudited condensed financial statements.

Evoke Pharma, Inc.
Condensed Statements of Cash Flows
(Unaudited)

	Nine Months Ended September 30,	
	2024	**2023**
Operating activities		
Net loss	$ (4,159,428)	$ (5,804,894)
Adjustments to reconcile net loss to net cash used in operating activities:		
Stock-based compensation expense	512,194	846,470
Non-cash interest expense	375,342	373,973
Non-cash lease expense	—	115,704
Change in operating assets and liabilities:		
Accounts receivable	(1,349,447)	(609,072)
Prepaid expenses and other current assets	749,447	828,556
Inventories	(11,568)	(215,547)
Accounts payable and accrued expenses	398,136	463,130
Accrued compensation	(733,376)	238,511
Operating lease liabilities	—	(115,704)
Net cash used in operating activities	(4,218,700)	(3,878,873)
Financing activities		
Proceeds from February 2024 Offering, net of issuance costs	6,718,211	—
Payment of February 2024 Offering costs	(426,293)	—
Proceeds from March 2024 Warrant Amendment, net of issuance costs	1,229,874	—
Proceeds from June 2024 Warrant Amendment, net of issuance costs	308,429	—
Payment of August 2024 Shelf Registration Statement offering costs	(15,500)	—
Proceeds from September 2024 Exercise Price Warrant Amendment, net of issuance costs	2,587,010	—
Proceeds from September 2024 Warrant Amendment, net of issuance costs	416,665	—
Proceeds from exercise of Pre-Funded Warrants	101	—
Redemption of fractional shares due to reverse stock split	(191)	—
Net cash provided by financing activities	10,818,306	—
Net increase (decrease) in cash and cash equivalents	6,599,606	(3,878,873)
Cash and cash equivalents at beginning of period	4,739,426	9,843,699
Cash and cash equivalents at end of period	$ 11,339,032	$ 5,964,826
Supplemental disclosure of non-cash financial activities		
August 2024 Shelf Registration Statement costs included in accounts payable and accrued expenses	$ 99,988	$ —
September 2024 Exercise Price Warrant Amendment costs included in accounts payable and accrued expenses	$ 54,561	$ —
September 2024 Warrant Amendment costs included in accounts payable and accrued expenses	$ 46,043	$ —

See accompanying notes to these unaudited condensed financial statements.

Evoke Pharma, Inc.
Notes to Condensed Financial Statements
(Unaudited)

1. Organization and Basis of Presentation

Evoke Pharma, Inc. (the "Company") was incorporated under the laws of the state of Delaware in January 2007. The Company is a specialty pharmaceutical company focused primarily on the development and commercialization of drugs to treat gastroenterological disorders and disease.

Since its inception, the Company has devoted its efforts to developing its sole product, Gimoti® (metoclopramide) nasal spray, the first and only nasally-administered product indicated for the relief of symptoms in adults with acute and recurrent diabetic gastroparesis. The Company launched U.S. commercial sales of Gimoti in October 2020 through its commercial partner Eversana Life Science Services, LLC ("Eversana").

The Company's activities are subject to the significant risks and uncertainties associated with any specialty pharmaceutical company that has launched its first commercial product, including market acceptance of the product and the potential need to obtain additional funding for its operations.

Going Concern

The financial statements have been prepared assuming the Company will continue as a going concern, which contemplates the realization of assets and the satisfaction of liabilities in the normal course of business. The Company has incurred recurring losses and negative cash flows from operations since inception and expects to continue to incur net losses for the foreseeable future until such time, if ever, that it can generate significant revenues from the sale of Gimoti. As of September 30, 2024, the Company had approximately $11.3 million in cash and cash equivalents. The Company anticipates that it will continue to incur losses from operations due to commercialization activities, including manufacturing Gimoti, conducting the post-marketing commitment single-dose pharmacokinetics ("PK") clinical trial of Gimoti to characterize dose proportionality of a lower dose strength of Gimoti, and for other general and administrative costs to support the Company's operations. Both the Company and Eversana may terminate the commercial services agreement pursuant to the Net Profit Quarterly Termination Right ("NPQTR") (as defined in Note 4); however, the Company has no intent to terminate the Eversana Agreement. Although Eversana has not exercised its right pursuant to the NPQTR, there can be no assurance it won't. Should Eversana exercise its right under the NPQTR, the Commercial Services and Loan Agreements, as described in Note 4 – Commercial Services and Loan Agreement with Eversana, would also be terminated and the Company would be responsible to repay the principal and interest on the loan, which amounted to $7.0 million as of September 30, 2024, within 90 days. As a result, there is substantial doubt about the Company's ability to continue as a going concern for one year after the date these financial statements are issued. The financial statements do not include any adjustments that may result from the outcome of this uncertainty.

The Company's net losses may fluctuate significantly from quarter-to-quarter and year-to-year. The Company anticipates that it will be required to raise additional funds through debt, equity or other forms of financing, such as potential collaboration arrangements, to fund future operations and continue as a going concern.

There can be no assurance that additional financing will be available when needed or on acceptable terms. If the Company is not able to secure adequate additional funding, the Company may be forced to make reductions in spending, extend payment terms with suppliers, and/or suspend or curtail commercialization activities. Any of these actions could materially harm the Company's business, results of operations, financial condition and future prospects. Because the Company's business is entirely dependent on the success of Gimoti, if the Company is unable to secure additional financing, or identify and execute on strategic alternatives for Gimoti or the Company, the Company will be required to curtail all activities and may be required to liquidate, dissolve or otherwise wind down its operations.

Notices of Delisting and Reverse Stock Split

On May 24, 2023, the Company received a written notice from the Listing Qualifications Department of The Nasdaq Stock Market LLC ("Nasdaq") indicating that, based on the Company's stockholders' equity of $2.1 million as of March 31, 2023, as reported in the Company's Quarterly Report on Form 10-Q for the quarter ended March 31, 2023, the Company was not in compliance with the minimum stockholders' equity requirement for continued listing on The Nasdaq Capital Market under Nasdaq Listing Rule 5550(b)(1) (the "Minimum Stockholders' Equity Requirement"). As required by Nasdaq, the Company submitted its plan to regain compliance with the Minimum Stockholders' Equity Requirement and Nasdaq granted the Company an extension until November 20, 2023 to regain compliance. Following notice on November 21, 2023 from Nasdaq that the Company had not met the Minimum Stockholders' Equity Requirement, the Company requested a hearing before the Nasdaq Hearings Panel (the "Panel") and on December 9, 2023, Nasdaq notified the Company that the hearing was scheduled for February 15, 2024. On February 15, 2024, the Company had the hearing before the Panel.

On March 18, 2024, the Company announced that the Panel granted the Company's request to continue its listing on the Nasdaq Capital Market, subject to the Company filing a Form 10-Q on or before May 15, 2024, demonstrating that, as of March 31, 2024, the Company is in compliance with the Minimum Stockholders' Equity Requirement. The Panel noted the Company's steps to maintain compliance with the Minimum Stockholders' Equity Requirement on a long-term basis, including the equity financing completed in February 2024, which provided the Company net proceeds of $6.2 million, and the potential for additional capital from the exercise of the warrants issued in the February 2024 financing. The Panel also noted that it is a requirement during the exception period that the Company provide prompt notification to the Panel of any significant events that occur during this time that may affect the Company's compliance with Nasdaq's requirements. This includes, but is not limited to, any event that may call into question the Company's ability to meet the terms of the exception granted. The Panel reserved the right to reconsider the terms of the granted exception based on any event, condition or circumstance that exists or develops that would, in the opinion of the Panel, make continued listing of the Company's securities on the Nasdaq Capital Market inadvisable or unwarranted.

On May 14, 2024, the Company filed its Form 10-Q reporting approximately $3.5 million in stockholders' equity.

On June 4, 2024, the Company was formally notified that the Panel determined that the Company has regained compliance with the Minimum Stockholders' Equity Requirement. Pursuant to Nasdaq Listing Rule 5815(d)(4)(A), the Company will be subject to a discretionary panel monitor through June 4, 2025. If, within that one-year monitoring period, the Company fails to maintain compliance with any Nasdaq continued listing requirement, the Listing Qualifications Staff (the "Staff") of Nasdaq will issue a Delist Determination Letter, and the Company will have an opportunity to request a new hearing with the initial Panel or a newly convened Hearings Panel if the initial Panel is unavailable. Notwithstanding Nasdaq Listing Rule 5810(c)(2), the Company will not be permitted to provide the Staff with a plan of compliance with respect to any deficiency that arises during the one-year monitoring period, and the Staff will not be permitted to grant additional time for the Company to regain compliance with respect to any deficiency.

As of September 30, 2024, the Company remained in compliance with the Minimum Stockholder's Equity Requirement.

On February 21, 2024, the Company received a letter from Nasdaq indicating that, for the last thirty consecutive business days, the bid price for the Company's common stock had closed below the minimum $1.00 per share requirement for continued listing on the Nasdaq Capital Market under Nasdaq Listing Rule 5550(a)(2) (the "Minimum Bid Price Requirement").

In accordance with Nasdaq Listing Rule 5810(c)(3)(A), the Company was provided an initial period of 180 calendar days, or until August 19, 2024, to regain compliance. The letter states that Nasdaq will provide written notification that the Company has achieved compliance with its rules if at any time before August 19, 2024, the bid price of the Company's common stock closes at $1.00 per share or more for a minimum of ten consecutive business days. The Nasdaq letter had no immediate effect on the listing or trading of the Company's common stock and the common stock continued to trade on The Nasdaq Capital Market.

On May 22, 2024, the Company's stockholders granted the board of directors the authority to effect a reverse stock split of the Company's outstanding common stock. In order to regain compliance with the Minimum Bid Price Requirement by August 19, 2024, on July 31, 2024, the Company filed an amendment (the "Amendment") to its amended and restated certificate of incorporation to effectuate a reverse stock split of the Company's common stock. Pursuant to the Amendment, at the effective time of 12:01 a.m. Eastern Time on August 1, 2024, each twelve (12) shares of the Company's common stock issued and outstanding was combined into one (1) validly issued, fully paid and non-assessable share of common stock (the "Reverse Stock Split"). The par value and the authorized shares of the Company's common stock were not adjusted as a result of the Reverse Stock Split. All of the Company's issued and outstanding common stock, warrants to purchase common stock, options to purchase common stock, per-share data and related information have been retroactively adjusted to reflect the Reverse Stock Split for all periods presented.

On August 15, 2024, the Company received a letter from Nasdaq stating the Company has regained compliance with the Minimum Bid Price Requirement and the minimum bid price matter is now closed.

2. Summary of Significant Accounting Policies

The accompanying unaudited condensed financial statements have been prepared in accordance with accounting principles generally accepted in the United States ("GAAP") for interim financial information and with the instructions of the Securities and Exchange Commission ("SEC") on Form 10-Q and Rule 8-03 of Regulation S-X. Accordingly, they do not include all of the information and disclosures required by GAAP for complete financial statements. In the opinion of management, the condensed financial statements include all adjustments necessary, which are of a normal and recurring nature, for the fair presentation of the Company's financial position and of the results of operations and cash flows for the periods presented. These financial statements should be read in conjunction with the audited financial statements and notes thereto for the year ended December 31, 2023 included in the Company's Annual Report on Form 10-K/A filed with the SEC on May 14, 2024. The results of operations for the interim period shown in this report are not necessarily indicative of the results that may be expected for any other interim period or for the full year. The balance sheet at December 31, 2023, has been derived from the audited financial statements at that date.

Risks and Uncertainties

Use of Estimates

The preparation of financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. On an ongoing basis, we evaluate our estimates, including those related to the valuation of share-based awards, the fair value of warrants and the assessment of our ability to fund our operations for at least the next 12 months from the date of issuance of these condensed financial statements. We base our estimates on historical experience and other market-specific or other relevant assumptions that we believe to be reasonable under the circumstances. Estimates are assessed each reporting period and updated to reflect current information. As future events and their effects cannot be determined with precision, actual results may materially differ from those estimates or assumptions.

Cash and Cash Equivalents

The Company deposits its cash with reputable financial institutions that are insured by the Federal Deposit Insurance Corporation ("FDIC"). This cash is held in checking, cash sweep, and money market accounts. At times, deposits held may exceed the amount of insurance provided by the FDIC. The Company maintains an insured cash sweep account in which cash from its main operating checking account is invested overnight in highly liquid, short-term investments. The Company considers all highly liquid investments with a maturity date of 90 days or less at the date of purchase to be cash equivalents. The Company has not experienced any losses in its cash and cash equivalents and management believes the Company is not exposed to significant credit risk with respect to such accounts. The Company's cash and cash equivalents are classified as Level 1 inputs within the fair value hierarchy.

Fair Value of Financial Instruments

The carrying amounts of all financial instruments, including accounts receivable and accounts payable and accrued expenses, are considered to be representative of their respective fair values because of the short-term nature of those instruments. The carrying value of the note payable approximates fair value based upon interest rates the Company believes it can currently obtain for similar debt, which is a Level 2 input within the fair value hierarchy.

Accounts Receivable

Accounts receivable are recorded net of allowance for credit losses, if any. The Company evaluates its estimate of expected credit losses based on a combination of factors, including historical experience, assessment of specific customer-related risks, review of outstanding invoices, forecasts about the future, and various other assumptions and estimates. The allowance for credit losses was zero as of both September 30, 2024 and December 31, 2023 and no bad debt expense was recorded for the three and nine months ended September 30, 2024 and 2023.

Inventories

The Company does not own or operate manufacturing facilities for the production of Gimoti, nor does it plan to develop its own manufacturing operations in the foreseeable future. The Company depends on third-party contract manufacturers for all of its required raw materials, drug substance and finished product for its commercial manufacturing. The Company has agreements with Cosma S.p.A. to supply metoclopramide for the manufacture of Gimoti, and with Thermo Fisher Scientific Inc., through its subsidiary Patheon UK Limited, for the manufacturing of Gimoti. The Company currently utilizes third-party consultants, which it engages on an as-needed, hourly basis, to manage the manufacturing contractors.

The Company's inventories consisted of the following as of September 30, 2024 and December 31, 2023:

	September 30, 2024	December 31, 2023
Raw materials	$ 257,467	$ 361,219
Finished goods	235,941	120,621
Total inventories	$ 493,408	$ 481,840

Inventories are stated at the lower of cost (first-in first-out basis) or net realizable value. The Company's raw materials inventories are held at its third-party suppliers and its finished goods inventories are held by Eversana. The Company records such inventories as consigned inventories.

Deferred Offering Costs

Deferred offering costs represent legal, accounting, and other direct costs related to future equity financings and are recognized as a non-current asset on the condensed balance sheets. After consummation of the equity financing, the offering costs are recognized as a reduction of proceeds and reclassified to additional paid-in capital on the condensed balance sheet. Should a planned equity financing

be abandoned, terminated, or significantly delayed, the deferred offering costs are immediately written off as an administrative expense. As of September 30, 2024, the Company had deferred offering costs of $115,000 related to the filing of a shelf registration statement in August 2024. As of December 31, 2023, the Company had deferred offering costs of $242,000 related to the public offering that was completed in February 2024, which was reclassified to additional paid-in capital in February 2024 upon completion of such offering.

Warrants

The Company accounts for warrants as equity-classified instruments based on an assessment of the warrant's specific terms and applicable authoritative guidance in Accounting Standards Codification ("ASC") 480, *Distinguishing Liabilities from Equity* ("ASC 480") and ASC 815, *Derivatives and Hedging* ("ASC 815"). The assessment considers whether the warrants are freestanding financial instruments pursuant to ASC 480, meet the definition of a liability pursuant to ASC 480, and whether the warrants meet all of the requirements for equity classification under ASC 815, including whether the warrants are indexed to the Company's own common stock and whether the warrant holders could potentially require "net cash settlement" in a circumstance outside of the Company's control, among other conditions for equity classification. This assessment, which requires the use of professional judgment, is conducted at the time of warrant issuance and as of each subsequent quarterly period end date while the warrants are outstanding.

For warrants that meet all criteria for equity classification, the warrants are required to be recorded as additional paid-in capital in the condensed balance sheets at the time of issuance. Equity-classified warrants are measured at their estimated fair value on the issuance date using either the Black-Scholes option pricing model or a Monte-Carlo simulation model based on the applicable assumptions, which include the exercise price of the warrants, the Company's stock price and volatility, the expected warrant term, the risk-free interest rate, the expected dividends, and if applicable, the vesting behavior.

Revenue Recognition

In accordance with ASC 606, *Revenue from Contracts with Customers* ("ASC 606"), the Company recognizes revenue when a customer obtains control of promised goods in an amount that reflects the consideration the Company expects to receive in exchange for the goods provided. Customer control is determined upon the customer's physical receipt of the product. To determine revenue recognition for arrangements within the scope of ASC 606, the Company performs the following five steps: identify the contracts with the customer; identify the performance obligations in the contract; determine the transaction price; allocate the transaction price to the performance obligations in the contract; and recognize revenue when (or as) it satisfies a performance obligation. At contract inception, the Company assesses the goods promised within each contract and determines those that are performance obligations and assesses whether each promised good is distinct. The Company then recognizes as revenue the amount of the transaction price that is allocated to the respective performance obligation when the customer obtains control of the product.

Product revenues are recorded net of sales-related adjustments, or transaction price, wherever applicable, including patient support programs, rebates, and other sales related discounts. The Company uses judgment to estimate variable consideration. The Company is subject to rebates under Medicaid and Medicare programs. The rebates for these programs are determined based on statutory provisions. The Company estimates Medicaid and Medicare rebates based on the expected number of claims and related cost associated with the customer transaction. Medicaid and Medicare rebates of $130,000 and $46,000 were recorded as accounts payable and accrued expenses in the condensed balance sheets as of September 30, 2024 and December 31, 2023, respectively.

Co-payment assistance is recorded as an offset to gross revenue at the time revenue from the product sale is recognized based on expected and actual program participation. Co-pay liabilities are estimated using prescribing data available from customers. The Company's analysis also contemplates application of the constraint in accordance with the guidance, under which it determines a significant reversal of revenue would not occur in a future period. If actual results in the future vary from estimates, the Company will adjust these estimates, which could affect net product revenue and earnings in the period such variances become known. Liabilities for co-pay assistance of approximately $160,000 and $66,000 as of September 30, 2024 and December 31, 2023, respectively, are classified as accounts payable and accrued expenses in the condensed balance sheets.

Net Loss Per Share

Basic net loss per share is calculated by dividing the net loss by the weighted-average number of common stock outstanding for the period, without consideration for common stock equivalents. Pre-Funded Warrants issued and sold by the Company to purchase shares of its common stock are included in the calculation of basic net loss per common share if the exercise price of the pre-funded warrants represents *de minimis* consideration and is non-substantive in relation to the price paid for the warrant, and if the warrants are immediately exercisable with no further vesting conditions or contingencies associated with them. The 1,204,413 shares of the Company's common stock underlying the Pre-Funded Warrants, Modified Series A Warrants and Modified Series C Warrants described in Note 3 – Stockholders' Equity, are included in the weighted average outstanding common stock in the calculation of basic and diluted net loss per share due to their nominal exercise price. The Company considers Series A Warrants, Series B Warrants, Series C Warrants, and Representatives' Warrants to be participating securities, because holders of such instruments participate in the event a dividend is paid on common stock. The holders of the Series A Warrants, Series B Warrants, Series C Warrants, and

Representatives' Warrants do not have a contractual obligation to share in the Company's losses. As such, losses are attributed entirely to common stockholders and for periods in which the Company has reported a net loss, diluted loss per common share is the same as basic loss per common share. Diluted net loss per share is calculated by dividing the net loss by the weighted-average number of common stock and common stock equivalents outstanding for the period determined using the treasury-stock method.

The following table sets forth the outstanding potentially dilutive securities that have been excluded from the calculation of diluted net loss per share for the three and nine months ended September 30, 2024 because to do so would be anti-dilutive:

	September 30,	
	2024	2023
Warrants to purchase common stock	1,901,687	—
Common stock options	154,799	53,263
Total excluded securities	2,056,486	53,263

Recent Accounting Pronouncements – Not Yet Adopted

In November 2023, the Financial Accounting Standards Board ("FASB") issued Accounting Standards Update ("ASU") No. 2023-07, *Segment Reporting (Topic 280) Improvements to Reportable Segment Disclosures* ("Topic 280"), which modifies the disclosure and presentation requirements of reportable segments ("ASU 2023-07"). The amendments in the update require the disclosure of significant segment expenses that are regularly provided to the chief operating decision maker (the "CODM") and included within each reported measure of segment profit and loss. The amendments also require disclosure of all other segment items by reportable segment and a description of its composition. Additionally, the amendments require disclosure of the title and position of the CODM and an explanation of how the CODM uses the reported measure(s) of segment profit or loss in assessing segment performance and deciding how to allocate resources. Lastly, the amendment requires that a public entity that has a single reportable segment provide all the disclosures required by ASU 2023-07 and all existing segment disclosures in Topic 280. This update is effective for annual periods beginning after December 15, 2023, and interim periods within fiscal years beginning after December 15, 2024. Early adoption is permitted. The Company is currently evaluating the impact that this guidance will have on the presentation of its financial statements and accompanying notes.

In December 2023, the FASB issued ASU No. 2023-09 ("ASU 2023-09"), *Income Taxes (Topic 740): Improvements to Income Tax Disclosures.* ASU 2023-09 requires disaggregated information about a reporting entity's effective tax rate reconciliation as well as information on income taxes paid. ASU 2023-09 is effective for public entities with annual periods beginning after December 15, 2024 and for private businesses for annual periods beginning after December 15, 2025, with early adoption permitted. The Company is currently evaluating the impact of this guidance on its financial statement disclosures.

3. Stockholders' Equity

Equity Transactions

February 2024 Offering

In February 2024, the Company entered into an underwriting agreement (the "Underwriting Agreement") with Craig-Hallum Capital Group LLC and Laidlaw & Company (UK) Ltd. (collectively, the "Underwriters"), relating to the issuance and sale of 427,886 common stock units (the "Common Stock Units") at a public offering price of $8.16 per Common Stock Unit and, to certain investors, 491,221 pre-funded warrant units (the "PFW Units") at a public offering price of $8.1588 per PFW Unit (the "February 2024 Offering"). Each Common Stock Unit consisted of (i) one share of common stock, (ii) a Series A Warrant to purchase one share of common stock (the "Series A Warrant"), (iii) a Series B Warrant to purchase one share of common stock (the "Series B Warrant"), and (iv) a Series C Warrant to purchase one share of common stock (the "Series C Warrant"). Each PFW Unit consisted of (i) a pre-funded warrant to purchase one share of common stock (the "Pre-Funded Warrants"), (ii) a Series A Warrant, (iii) a Series B Warrant, and (iv) a Series C Warrant. The Company also issued warrants to the Underwriters to purchase up to 45,955 shares of common stock, equal to 5% of the securities sold in the February 2024 Offering (the "Representatives' Warrants"). The Series A Warrants are fully exercisable and recognized as a freestanding instrument. In accordance with the terms and provisions of the Series C Warrants, the Series C Warrants are not exercisable, in part or in whole, at any time unless the Series B Warrants have been exercised. If Series B Warrants are not exercised before November 13, 2024, the corresponding Series C Warrants are no longer deemed outstanding and cannot be exercised. Furthermore, the Series B Warrants and Series C Warrants cannot be transferred by the holder without the consent of the Company, and, therefore the Series B Warrants and Series C Warrants are accounted for as a single unit of account.

Net cash proceeds from the February 2024 Offering was $6.2 million after deducting underwriter and offering expenses. The Pre-Funded Warrants, Series A Warrants, Series B Warrants, and Series C Warrants are equity classified and were recognized as additional paid-in capital in the condensed balance sheets. The Representatives' Warrants were accounted for under ASC 718,

Compensation — Stock Compensation, and were recognized as an equity issuance cost at their grant date fair value within additional paid-in capital in the condensed balance sheets.

August 2024 Shelf Registration Statement

On August 29, 2024, the Company filed a universal shelf registration statement on Form S-3 (the "Shelf Registration Statement"), covering the offering of up to $50.0 million of common stock, preferred stock, debt securities, warrants, and/or units, subject to the "Baby Shelf Limitation" which limits the amount that the Company can offer to up to one-third of its public float during any 12-month period so long as our public float remains below $75 million. The Shelf Registration Statement was declared effective by the SEC on September 6, 2024.

As of September 30, 2024, there have been no shares of common stock nor preferred stock, debt securities, warrants, and/or units issued under the August 2024 Shelf Registration Statement.

At The Market Equity Offering

The Company had previously entered into a Sales Agreement (the "Sales Agreement") with H.C. Wainwright & Co., LLC ("Wainwright"), under which the Company may, from time to time, sell shares of its common stock having an aggregate offering price of up to approximately $1.9 million through Wainwright (the "ATM Offering"). The Shelf Registration Statement included a prospectus covering the offering, issuance and sale of up to approximately $1.9 million of the Company's common stock from time to time through the ATM Offering. The shares to be sold under the Sales Agreement may be issued and sold pursuant to the Shelf Registration Statement.

The Company did not issue any shares of common stock in the ATM Offering during the three month period ended September 30, 2024.

Warrant Amendments

In each of March, June and September 2024, the Company entered into substantially similar amendments with certain holders of its Series B Warrants and Series C Warrants (individually, the "March 2024 Warrant Amendment," "June 2024 Warrant Amendment," and the "September 2024 Warrant Amendment," respectively and collectively, the "Warrant Amendments"). Pursuant to the Warrant Amendments, to the extent a holder exercised its Series B Warrants prior to their respective exercise deadlines, as defined in the amendment documents (the "Amendment Exercise Deadline"), the holder's corresponding Series C Warrants vested and were exercisable for the lesser of (i) three times the number of Series B Warrants exercised by the Holder and (ii) the total number of Series C Warrants outstanding to the holder. Following each Amendment Exercise Deadline, if the holder exercised any remaining Series B Warrants, the remaining Series C Warrants, if any, vested and became exercisable on a one-for-one basis as to the same number of Series B Warrants exercised.

The Warrant Amendments allowed a holder to elect to receive Pre-Funded Warrants upon exercise of Series B Warrants and Series C Warrants in lieu of shares of the Company's common stock, at a purchase price of $8.1588 per warrant exercised and an exercise price of $0.0012 per Pre-Funded Warrant.

Net cash proceeds from the March, June and September 2024 Warrant Amendment were $1.2 million, $0.3 million and $0.4 million, respectively, after deducting underwriter commissions and offering expenses. The Warrant Amendments were entered into to encourage the exercise of Series B Warrants in order to obtain capital to meet the Minimum Stockholders' Equity Requirement. The Warrant Amendments neither changed the number of shares of common stock underlying each series of warrants nor its equity classification. The incremental change in fair value from the Warrant Amendments was accounted for as equity issuance costs and recognized within additional paid-in capital in the condensed balance sheets.

September 2024 Exercise Price Warrant Amendment

In September 2024, the Company also entered into an amendment with certain holders of its Series A Warrants, Series B Warrants and Series C Warrants (the "September 2024 Exercise Price Warrant Amendment"). Pursuant to the September 2024 Exercise Price Warrant Amendment, such holders agreed to pay a non-refundable up-front payment of $3.99 per Series A Warrant or Series C Warrant to reduce the exercise price of the Series A Warrants and Series C Warrants from $8.16 to $0.01 (such Series A Warrants and Series C Warrants modified to have a reduced exercise price referred to as the "Modified Series A Warrants" and "Modified Series C Warrants"). Pursuant to the September 2024 Exercise Price Warrant Amendment, to the extent such holder executed the September 2024 Exercise Price Warrant Amendment and paid consideration for the number of Series A Warrants and/or Series C Warrants to be modified before 5:00 p.m. Pacific time on September 30, 2024 (the "September 2024 Exercise Price Warrant Amendment Exercise Deadline"), the exercise price of Modified Series A Warrants and Modified Series C Warrants would be $0.01. To the extent such holder did not elect to modify all outstanding Series A Warrants and Series C Warrants, the remaining Series A Warrants and Series C Warrants held by each holder retained an exercise price of $8.16 per Series A Warrant or Series C Warrant.

Net cash proceeds from the September 2024 Exercise Price Warrant Amendment were $2.5 million after deducting underwriter and offering expenses. The September 2024 Exercise Price Warrant Amendment was entered to encourage the modification of Series A Warrants and Series C Warrants in order to obtain capital to meet the Minimum Stockholders' Equity Requirement. The September 2024 Exercise Price Warrant Amendment neither changed the number of shares of Common Stock underlying each series of warrants nor its equity classification. The incremental change in fair value from the September 2024 Exercise Price Warrant Amendment was an equity issuance cost and was recognized within additional paid-in capital.

In connection with the September 2024 Exercise Price Warrant Amendment, the Company entered into a letter agreement, dated September 27, 2024 (the "Letter Agreement"), with certain affiliates of Nantahala Capital Management, LLC (collectively, "Nantahala"), pursuant to which, subject to certain limitations, the Company will provide Nantahala the right to appoint (or cause to be nominated) (i) one member of the Company's board of directors (the "Board") and one member of each Board committee so long as Nantahala, together with its affiliates, beneficially owns at least 5.0% of the Company's outstanding shares of common stock and (ii) two members of the Board so long as Nantahala, together with its affiliates, beneficially owns at least 15.0% of the Company's outstanding shares of common stock, subject to certain exceptions.

Warrants

The following table is a summary of the Company's warrants outstanding as of September 30, 2024:

	Number of Warrants Outstanding	Number of Warrants Exercisable	Shares of Common Stock Underlying Warrants	Exercise Price	Initial Exercise Date	Expiration Date
Pre-Funded Warrants	580,610	580,610	580,610	$ 0.0012	February 13, 2024	Until Exercised in Full
Series A Warrants	545,933	545,933	545,933	$ 8.16	February 13, 2024	February 13, 2029
Modified Series A Warrants[(1)]	373,176	373,176	373,176	$ 0.01	February 13, 2024	February 13, 2029
Series B Warrants	665,826	665,826	665,826	$ 8.16	February 13, 2024	November 13, 2024
Series C Warrants[(2)]	643,973	643,973	643,973	$ 8.16	February 13, 2024	November 13, 2024 or February 13, 2029
Modified Series C Warrants[(1)]	250,627	250,627	250,627	$ 0.01	February 13, 2024	February 13, 2029
Representatives' Warrants	45,955	45,955	45,955	$ 13.47	August 13, 2024	February 13, 2029
Total warrants	3,106,100	3,106,100	3,106,100			

(1) The Modified Series A Warrants and Modified Series C Warrants represent Series A Warrants and Series C Warrants, respectively, modified under the September 2024 Exercise Price Warrant Amendment.

(2) The Series C Warrants are subject to a vesting schedule and may only be exercised to the extent and in proportion to a holder of the Series C Warrants exercising its corresponding Series B Warrants, subject to accelerated vesting pursuant to the Warrant Amendment described above. The Series C Warrants expire on November 13, 2024, provided that to the extent and in proportion to a holder of the Series C Warrants have vested based on the exercise of the corresponding Series B Warrants, such Series C Warrants will expire on February 13, 2029.

There were no warrants outstanding as of December 31, 2023.

Stock-Based Compensation

Stock Options

Stock-based compensation expense includes charges related to stock option grants. The Company measures stock-based compensation expense based on the grant date fair value of any awards granted to its employees. Such expense is recognized over the period of time that employees provide service and earn rights to the awards.

During the nine months ended September 30, 2024 and 2023, the Company granted stock options to purchase 120,182 and 153,750 shares of the Company's common stock, respectively.

The estimated fair value of each stock option award granted was determined on the date of grant using the Black-Scholes option-pricing valuation model with the following assumptions:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2024	2023	2024	2023
Risk free interest rate	3.8% – 3.9%	—	3.8% – 4.5%	1.3% – 3.4%
Expected option term (in years)	5.8 – 6.0	—	5.5 – 6.0	5.5 – 6.0
Expected volatility of common stock	105.8% – 106.6%	—	105.8% – 107.1%	99.3% – 103.6%
Expected dividend yield	0.0%	—	0.0%	0.0%

Employee Stock Purchase Plan

Stock-based compensation expense also includes charges related to common stock issued under the Amended and Restated 2013 Employee Stock Purchase Plan (the "ESPP"). The Company allows eligible employees to purchase shares of the Company's common stock through payroll deductions at a price equal to 85% of the lesser of the fair market value of the Company's common stock on the first trading day of the offering period or on the applicable purchase date. The offering period is determined by the compensation committee and may be up to 27 months long. Pursuant to the approval of the ESPP, current offering periods commence on each of September 1 and March 1 during the term. Purchase dates will be set for the last trading day in each six-month and will occur on each of August 31 and February 28 (unless such days are not trading days). In January 2024, the number of shares of common stock available for issuance under the ESPP was increased by 2,785 shares as a result of the automatic increase provision in the ESPP. During the third quarter of 2024, an offering period was initiated. There have been no shares of common stock issued under the ESPP during the nine months ended September 30, 2024. As of September 30, 2024, 14,900 shares under the ESPP remain available for purchase.

The estimated fair value of each ESPP award granted was determined on the date of purchase date using the Black-Scholes option-pricing valuation model with the following assumptions:

	Three and Nine Months Ended September 30,	
	2024	2023
Risk free interest rate	4.9%	—
Expected option term (in years)	0.5	—
Expected volatility of common stock	91.5%	—
Expected dividend yield	0.0%	—

The Company recognized stock-based compensation expense as follows:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2024	2023	2024	2023
Research and development	$ 3,016	$ —	$ 4,231	$ 2,841
Selling, general and administrative	128,571	281,758	507,963	843,629
Total stock-based compensation expense	$ 131,587	$ 281,758	$ 512,194	$ 846,470

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2024	2023	2024	2023
Stock options	$ 130,054	$ 281,758	$ 510,661	$ 846,470
ESPP	1,533	—	1,533	—
Total stock-based compensation expense	$ 131,587	$ 281,758	$ 512,194	$ 846,470

As of September 30, 2024, there was approximately $0.7 million of unrecognized compensation costs related to outstanding employee and board of director options, which are expected to be recognized over a weighted-average period of 1.2 years.

As of September 30, 2024, there was approximately $8,000 of unrecognized compensation costs related to the ESPP, which are expected to be recognized over a weighted-average period of 0.4 years.

4. Commercial Services and Loan Agreements with Eversana

On January 21, 2020, the Company entered into a commercial services agreement (as amended, the "Eversana Agreement") with Eversana for the commercialization of Gimoti. Pursuant to the Eversana Agreement, Eversana commercializes and distributes Gimoti in the United States. Eversana also manages the marketing of Gimoti to targeted health care providers, as well as the sales and distribution of Gimoti in the United States.

Under the terms of the Eversana Agreement, the Company maintains ownership of the Gimoti NDA, as well as legal, regulatory, and manufacturing responsibilities for Gimoti. Eversana utilizes its internal sales organization, along with other commercial functions, for market access, marketing, distribution and other related patient support services. The Company records sales for Gimoti and will retain more than 80% of net product profits once both parties' costs are reimbursed. For the three months ended September 30, 2024 and 2023, approximately $2.2 million and $1.3 million of Eversana profit sharing costs were included as selling, general and administrative costs, respectively. For the nine months ended September 30, 2024 and 2023, approximately $5.9 million and $3.0 million of Eversana profit sharing costs were included as selling, general and administrative costs, respectively. As of September 30, 2024, unreimbursed commercialization costs to Eversana were approximately $72.8 million. Such costs will generally be payable only as net product profits are recognized or upon certain termination events. Eversana will receive reimbursement of its commercialization costs pursuant to an agreed upon budget and a percentage of product profits in the mid-to-high teens. Net product profits are the net sales (as defined in the Eversana Agreement) of Gimoti, less (i) reimbursed commercialization costs, (ii) manufacturing and administrative costs set at a fixed percentage of net sales, and (iii) third party royalties. During the term of the Eversana Agreement, Eversana agreed to not market, promote, or sell a competing product in the United States. On February 1, 2022, the Eversana Agreement was amended to extend the term from June 19, 2025 (five years from the date the Food & Drug Administration approved the Gimoti new drug application) to December 31, 2026, unless terminated earlier pursuant to its terms. This amendment also increased the percentage of net product profit retained by the Company and increased the proportion of costs that are reimbursed to Eversana to the extent Eversana has accumulated unreimbursed costs.

Upon expiration or termination of the agreement, the Company will retain all profits from product sales and assume all corresponding commercialization responsibilities. Within 30 days after each of the first three annual anniversaries of commercial launch, either party may terminate the agreement if net sales of Gimoti do not meet certain annual thresholds. Either party may terminate the agreement: for the material breach of the other party, subject to a 60-day cure period; in the event an insolvency, petition of the other party is pending for more than 60 days; upon 30 days written notice to the other party if Gimoti is subject to a safety recall; the other party is in breach of certain regulatory compliance representations under the agreement; if the Company discontinues the development or production of Gimoti; if the net profit is negative for any two consecutive calendar quarters (the "Net Profit Quarterly Termination Right") beginning with the measurement date of June 30, 2023; if the cumulative net product profits fail to reach certain thresholds in the first three years following launch; or if there is a change in applicable laws that makes operation of the services as contemplated under the agreement illegal or commercially impractical. Either party may also terminate the Eversana Agreement upon a change of control of the Company's ownership.

The Company's net profits were negative for the two preceding calendar quarters as of September 30, 2024, and therefore, Eversana or the Company can exercise the Net Profit Quarterly Termination Right during the 60-day period after quarter-end. Since the note payable and accrued interest payable can be accelerated by Eversana by terminating the Eversana Agreement as of September 30, 2024, those payments were recorded as current liabilities as of September 30, 2024. Each party will continue to have the option to exercise the Net Profit Quarterly Termination Right for the 60-day period following the end of future quarters so long as the net profit under the Eversana Agreement remains negative for consecutive quarters.

In the event that the Company initiates such termination, the Company shall pay to Eversana a one-time payment equal to all of Eversana's unreimbursed cost plus a portion of Eversana's commercialization costs incurred in the 12 months prior to termination. Such payment amount would be reduced by the amount of previously reimbursed commercialization costs and profit split paid for the related prior twelve-month period and any revenue which occurred prior to the termination yet to be collected. If Eversana terminates the agreement due to an uncured material breach by the Company, or if the Company terminates the Eversana Agreement in certain circumstances, including pursuant to the Net Profit Quarterly Termination Right, the Company has agreed to reimburse Eversana for its unreimbursed commercialization costs for the prior twelve-month period and certain other costs. In addition, Eversana may terminate the Eversana Agreement if the Company withdraws Gimoti from the market for more than 90 days. If Eversana terminates the Eversana Agreement for convenience, the Company is under no obligation to reimburse Eversana for unreimbursed commercialization costs.

In connection with the Eversana Agreement, the Company and Eversana have entered into the Eversana Credit Facility, pursuant to which Eversana has agreed to provide a revolving Credit Facility of up to $5 million to the Company upon FDA approval of the Gimoti NDA under certain customary conditions. The Eversana Credit Facility terminates on December 31, 2026, unless terminated earlier pursuant to its terms. The Eversana Credit Facility is secured by all of the Company's personal property other than the Company's intellectual property. Under the terms of the Eversana Credit Facility, the Company cannot grant an interest in the Company's intellectual property to any other person. Each loan under the Eversana Credit Facility will bear interest at an annual rate equal to 10.0%, with such interest due at the end of the loan term. In 2020, the Company borrowed $5 million under the Eversana Credit Facility.

The Company may prepay any amounts borrowed under the Eversana Credit Facility at any time without penalty or premium. The maturity date of all amounts, including interest, borrowed under the Eversana Credit Facility will be 90 days after the expiration or earlier termination of the Eversana Agreement. The Eversana Credit Facility also includes events of default, the occurrence and continuation of which provide Eversana with the right to exercise remedies against the Company and the collateral securing the loans under the Eversana Credit Facility, including the Company's cash. These events of default include, among other things, the Company's failure to pay any amounts due under the Eversana Credit Facility, an uncured material breach of the representations, warranties and other obligations under the Eversana Credit Facility, the occurrence of insolvency events and the occurrence of a change in control.

5. Subsequent Events

Lease Amendment

On October 16, 2024, the Company entered into the seventh amendment of its existing lease agreement (the "Seventh Amendment") with SB Corporate Centre III-IV, LLC (the "Landlord"), to amend the office lease agreement, dated as of December 19, 2016, by and between the Landlord and the Company (as amended, the "Lease"), relating to office space, which serves as the Company's headquarters. The Seventh Amendment extends the term of the Lease from October 31, 2024 to March 31, 2027. The Seventh Amendment provides that the base monthly rent for the leased space will be $6,456.95 from November 1, 2024 to October 31, 2025, $6,650.66 from November 1, 2025 to October 31, 2026 and $6,850.18 from November 1, 2026 to March 31, 2027, and that the Company will be obligated to pay a specified percentage of certain expenses paid by the Landlord. The Company will also be granted a one-month rent abatement for November 2024, provided there is no material default under the Lease. The Lease will be accounted for as an operating lease.

Warrant Exercises

On October 28, 2024, the Company received net proceeds of $3.6 million after deducting underwriter expenses from the exercise of Pre-Funded Warrants, Series A Warrants, Series B Warrants, and Series C Warrants and issued 591,166 shares of common stock.

Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations

The following discussion and analysis should be read in conjunction with our financial statements and accompanying notes included in this Quarterly Report on Form 10-Q and the financial statements and accompanying notes thereto for the fiscal year ended December 31, 2023 and the related Management's Discussion and Analysis of Financial Condition and Results of Operations, both of which are contained in our Annual Report on Form 10-K/A filed with the Securities and Exchange Commission, or SEC, on May 14, 2024. Past operating results are not necessarily indicative of results that may occur in future periods.

Forward-Looking Statements

This Quarterly Report on Form 10-Q contains "forward-looking statements" within the meaning of Section 27A of the Securities Act of 1933, as amended, or the Securities Act, and Section 21E of the Securities Exchange Act of 1934, as amended, or the Exchange Act. All statements other than statements of historical facts contained in this Quarterly Report on Form 10-Q, including statements regarding our future results of operations and financial position, business strategy, commercial activities to be conducted by Eversana Life Science Services, LLC, or Eversana, the pricing and reimbursement for Gimoti®™ (metoclopramide) nasal spray, future prescribing trends for Gimoti, future regulatory developments, research and development costs, the timing and likelihood of commercial success, the potential to develop future product candidates, plans and objectives of management for future operations, continued compliance with Nasdaq listing requirements, and future results of current and anticipated products, are forward-looking statements. These statements involve known and unknown risks, uncertainties and other important factors that may cause our actual results, performance or achievements to be materially different from any future results, performance or achievements expressed or implied by the forward-looking statement. In some cases, you can identify forward-looking statements by terms such as "may," "will," "should," "expect," "plan," "anticipate," "could," "intend," "target," "project," "contemplates," "believes," "estimates," "predicts," "potential" or "continue" or the negative of these terms or other similar expressions. Although we believe the expectations reflected in these forward-looking statements are reasonable, such statements are inherently subject to risk and we can give no assurances that our expectations will prove to be correct. Given these risks, uncertainties and other factors, you should not place undue reliance on these forward-looking statements, which speak only as of the date of this Quarterly Report on Form 10-Q. You should read this Quarterly Report on Form 10-Q completely. As a result of many factors, including without limitation those set forth under "Risk Factors" under Item 1A of Part II below, and elsewhere in this Quarterly Report on Form 10-Q, our actual results may differ materially from those anticipated in these forward-looking statements. Except as required by applicable law, we undertake no obligation to update these forward-looking statements to reflect events or circumstances after the date of this report or to reflect actual outcomes. For all forward-looking statements, we claim the protection of the safe harbor for forward-looking statements contained in the Private Securities Litigation Reform Act of 1995.

We use our registered trademark, EVOKE PHARMA, and other trademarks, including GIMOTI, in this Quarterly Report on Form 10-Q. This Quarterly Report on Form 10-Q also includes trademarks, tradenames and service marks that are the property of other organizations. Solely for convenience, trademarks and tradenames referred to in this Quarterly Report on Form 10-Q appear without the ® and ™ symbols, but those references are not intended to indicate, in any way, that we will not assert, to the fullest extent under applicable law, our rights or that the applicable owner will not assert its rights, to these trademarks and tradenames.

Unless the context requires otherwise, references in this Quarterly Report on Form 10-Q to "Evoke," "we," "us" and "our" refer to Evoke Pharma, Inc.

Overview

We are a specialty pharmaceutical company focused primarily on the development and commercialization of drugs to treat gastrointestinal, or GI, disorders and diseases. Since our inception, we have devoted our efforts to developing our sole product, Gimoti (metoclopramide) nasal spray, the first and only nasally-administered product indicated for the relief of symptoms in adults with acute and recurrent diabetic gastroparesis. In June 2020, we received approval from the U.S. Food and Drug Administration, or FDA, for our 505(b)(2) New Drug Application, or NDA, for Gimoti. We launched commercial sales of Gimoti in the United States in October 2020 through our commercial partner Eversana.

Diabetic gastroparesis is a GI disorder affecting millions of patients worldwide, in which food in an individual's stomach takes too long to empty resulting in a variety of serious GI symptoms and systemic metabolic complications. The gastric delay caused by gastroparesis can compromise absorption of orally administered medications. In May 2023, we reported results from a study conducted by Eversana which showed diabetic gastroparesis patients taking Gimoti had significantly fewer physician office visits, emergency department visits, and inpatient hospitalizations compared to patients taking oral metoclopramide. This overall lower health resource utilization reduced patient and payor costs by approximately $15,000 during a six-month time period for patients taking Gimoti compared to patients taking oral metoclopramide.

In January 2020, we entered into a commercial services agreement with Eversana, or the Eversana Agreement, for the commercialization of Gimoti. Pursuant to the Eversana Agreement, Eversana commercializes and distributes Gimoti in the United

States. Eversana also manages the marketing of Gimoti to targeted health care providers, as well as the sales and distribution of Gimoti in the United States. Eversana also provided a $5 million revolving credit facility, or the Eversana Credit Facility, that became available upon FDA approval of the Gimoti NDA. In 2020 we borrowed $5 million under the Eversana Credit Facility, which expires on December 31, 2026, unless terminated earlier pursuant to its terms.

We have primarily funded our operations through the sale of our convertible preferred stock prior to our initial public offering in September 2013, borrowings from loans, and the sale of shares of our common stock, warrants, and pre-funded warrants in public offerings. We launched commercial sales of Gimoti in late October 2020 with Eversana and, to date, have generated modest sales.

We have incurred losses in each year since our inception. These operating losses resulted from expenses incurred in connection with advancing Gimoti through development activities, pre-commercial and commercialization activities, and other general and administrative costs associated with our operations. We expect to continue to incur operating losses until revenues from sales of Gimoti exceed our expenses, if ever. We may never become profitable, or if we do, we may not be able to sustain profitability on a recurring basis.

As of September 30, 2024, we had cash and cash equivalents of approximately $11.3 million. Current cash on hand is intended to fund commercialization activities for Gimoti, including manufacturing Gimoti, conducting the post-marketing commitment single-dose pharmacokinetics, or PK, clinical trial of Gimoti to characterize dose proportionality of a lower dose strength of Gimoti and any additional development activities should we seek additional indications, protecting our intellectual property portfolio and for other general and administrative costs to support our operations. We believe, based on our current operating plan, excluding any potential early repayment of the Eversana Credit Facility, that our existing cash and cash equivalents as of September 30, 2024, as well as cash flows from future net sales of Gimoti, will be sufficient to fund our operations into the fourth quarter of 2025. However, should Eversana terminate the Eversana Agreement under the NPQTR (as defined in Note 1 to our financial statements), repayment of the Eversana Credit Facility, in addition to our other ongoing obligations, would raise substantial doubt out our ability to continue as a going concern. As such, we have concluded there is substantial doubt about our ability to continue as a going concern as our existing cash on hand as of September 30, 2024, is not sufficient to fund our operations 12 months from the issuance of this Quarterly Report on Form 10-Q. This period could be further shortened if future net sales of Gimoti are less than expected or if there are any significant increases in planned spending on commercialization activities, including for marketing and manufacturing of Gimoti, and our selling, general and administrative costs to support operations, including as a result of any termination of the Eversana Agreement. We anticipate that we will be required to raise additional funds in order to continue as a going concern. Because our business is entirely dependent on the success of Gimoti, if we are unable to secure additional financing or identify and execute on other development or strategic alternatives for Gimoti or our company, we will be required to curtail all of our activities and may be required to liquidate, dissolve or otherwise wind down our operations. Any of these events could result in a complete loss of your investment in our securities.

Nasdaq Listing and Reverse Stock Split

On May 24, 2023, we received a written notice from Nasdaq indicating that, based on our stockholders' equity of $2.1 million as of March 31, 2023, as reported in our Quarterly Report on Form 10-Q for the quarter ended March 31, 2023, we were not in compliance with the minimum stockholders' equity requirement for continued listing on The Nasdaq Capital Market under Nasdaq Listing Rule 5550(b)(1), or the Minimum Stockholders' Equity Requirement. As required by Nasdaq, we submitted our plan to regain compliance with the Minimum Stockholders' Equity Requirement and Nasdaq granted us an extension until November 20, 2023 to regain compliance. Following notice on November 21, 2023 from Nasdaq that we had not met the Minimum Stockholders' Equity Requirement, we requested a hearing before the Nasdaq Hearings Panel, or the Panel, and on December 9, 2023, Nasdaq notified us that the hearing was scheduled for February 15, 2024. On February 15, 2024, we had the hearing before the Panel.

On March 18, 2024, we announced that the Panel granted our request to continue our listing on the Nasdaq Capital Market, subject to the filing a Form 10-Q on or before May 15, 2024, demonstrating that, as of March 31, 2024, we are in compliance with the Minimum Stockholders' Equity Requirement. The Panel noted our steps to maintain compliance with the Minimum Stockholders' Equity Requirement on a long-term basis, including the equity financing completed in February 2024, which provided us net proceeds of $6.2 million, and the potential for additional capital from the exercise of the warrants issued in the February 2024 financing. The Panel also noted that it is a requirement during the exception period that we provide prompt notification to the Panel of any significant events that occur during this time that may affect our compliance with Nasdaq's requirements. This includes, but is not limited to, any event that may call into question our ability to meet the terms of the exception granted. The Panel reserved the right to reconsider the terms of the granted exception based on any event, condition or circumstance that exists or develops that would, in the opinion of the Panel, make continued listing of our securities on the Nasdaq Capital Market inadvisable or unwarranted.

On May 14, 2024, we filed its Form 10-Q reporting approximately $3.5 million in stockholders' equity.

On June 4, 2024, we were formally notified that the Panel determined that we have regained compliance with the Minimum Stockholders' Equity Requirement. Pursuant to Nasdaq Listing Rule 5815(d)(4)(A), we will be subject to a discretionary panel monitor through June 4, 2025. If, within that one-year monitoring period, we fail to maintain compliance with any Nasdaq continued listing requirement, the Listing Qualifications Staff, or the Staff, of Nasdaq will issue a Delist Determination Letter, and we will have

an opportunity to request a new hearing with the initial Panel or a newly convened Hearings Panel if the initial Panel is unavailable. Notwithstanding Nasdaq Listing Rule 5810(c)(2), we will not be permitted to provide the Staff with a plan of compliance with respect to any deficiency that arises during the one-year monitoring period, and the Staff will not be permitted to grant additional time for us to regain compliance with respect to any deficiency.

On February 21, 2024, we received a letter from Nasdaq indicating that, for the last thirty consecutive business days, the bid price for our common stock had closed below the minimum $1.00 per share requirement for continued listing on the Nasdaq Capital Market under Nasdaq Listing Rule 5550(a)(2), or the Minimum Bid Price Requirement.

In accordance with Nasdaq Listing Rule 5810(c)(3)(A), we were provided an initial period of 180 calendar days, or until August 19, 2024, to regain compliance. The letter states that Nasdaq will provide written notification that we have achieved compliance with its rules if at any time before August 19, 2024, the bid price of our common stock closes at $1.00 per share or more for a minimum of ten consecutive business days. The Nasdaq letter had no immediate effect on the listing or trading of our common stock and the common stock continued to trade on The Nasdaq Capital Market.

In May 2024, our stockholders granted our board of directors the authority to effect a reverse stock split of our outstanding common stock. In order to regain compliance with the Minimum Bid Price Requirement by August 19, 2024, on July 31, 2024, we filed an amendment, or the Amendment, to our amended and restated certificate of incorporation to effectuate a reverse stock split of our common stock. Pursuant to the Amendment, at the effective time of 12:01 a.m. Eastern Time on August 1, 2024, each twelve (12) shares of our common stock issued and outstanding was combined into one (1) validly issued, fully paid and non-assessable share of common stock, or the Reverse Stock Split. The par value and the authorized shares of our common stock were not adjusted as a result of the Reverse Stock Split. All of our issued and outstanding common stock, warrants to purchase common stock, options to purchase common stock, per-share data and related information have been retroactively adjusted to reflect the Reverse Stock Split for all periods presented.

On August 15, 2024, we received a letter from Nasdaq stating we had regained compliance with the Minimum Bid Price Requirement and the minimum bid price matter is now closed.

Financial Operations Overview

Revenue Recognition

Our ability to generate revenue and become profitable depends on our ability to successfully commercialize Gimoti, which we launched in the United States through prescription in October 2020 through our commercial partner Eversana. If we or Eversana fail to successfully grow sales of Gimoti, we may never generate significant revenues and our results of operations and financial position will be adversely affected.

In accordance with Accounting Standards Codification, or ASC, 606, *Revenue from Contracts with Customers*, we recognize revenue when a customer obtains control of promised goods in an amount that reflects the consideration we expect to receive in exchange for the goods provided. Customer control is determined upon the customer's physical receipt of the product. To determine revenue recognition for arrangements within the scope of ASC 606, we perform the following five steps: identify the contracts with the customer; identify the performance obligations in the contract; determine the transaction price; allocate the transaction price to the performance obligations in the contract; and recognize revenue when (or as) it satisfies a performance obligation. At contract inception, we assess the goods promised within each contract and determine those that are performance obligations and assess whether each promised good is distinct. We then recognize as revenue the amount of the transaction price that is allocated to the respective performance obligation when the customer obtains control of the product.

Product revenues are recorded net of sales-related adjustments, wherever applicable, including patient support programs, rebates, and other sales related discounts. We use judgment to estimate variable consideration. We are subject to rebates under Medicaid and Medicare programs. The rebates for these programs are determined based on statutory provisions. We estimate Medicaid and Medicare rebates based on the expected number of claims and related cost associated with the customer transaction.

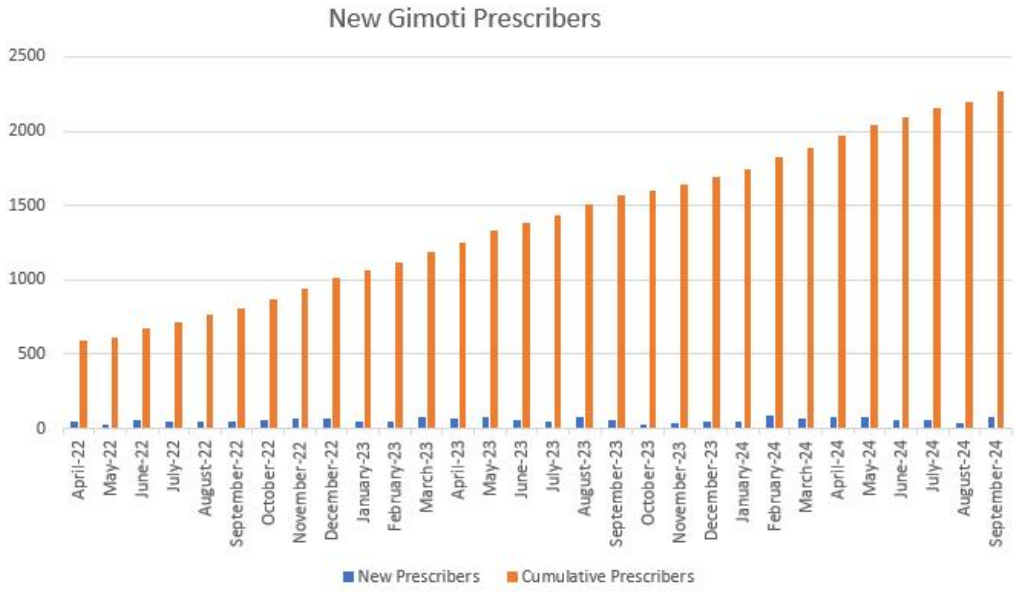
We also make estimates about co-payment assistance to commercially insured patients meeting certain eligibility requirements, as well as to uninsured patients. Co-payment assistance is recorded as an offset to gross revenue at the time revenue from the product sale is recognized based on expected and actual program participation. Co-pay liabilities are estimated using prescribing data available from customers. Actual amounts of consideration ultimately received may differ from our estimates. If actual results in the future vary from estimates, we will adjust these estimates, which would affect net product revenue and earnings in the period such variances become known. Liabilities for Medicare and Medicaid rebates, as well as co-pay assistance, are classified as accounts payable and accrued expenses in the balance sheets.

Sales of Gimoti Metrics

Gimoti prescriptions, prescribers, and other revenue metrics continue to increase. Net product sales during the quarter ended September 30, 2024, were approximately $2.7 million which is a $0.1 million increase compared to net product sales for the quarter

ended June 30, 2024. Gimoti pharmacy services were fully transitioned to ASPN Pharmacy, or ASPN, from vitaCare Prescription Services, or vitaCare, during the fourth quarter of 2023. The ASPN platform offers a seamless path for processing and filling prescriptions, helps patients understand coverage and identify available savings opportunities, and facilitates communications between providers and payors. We believe this transition has improved the proportion of prescriptions covered by insurance payors through increased patient communication and electronic automation of processes and speed of communication. In addition to the ASPN transition, we added several new pharmacies to our pharmacy platform during the nine months ended September 30, 2024, which has allowed for better insurance coverages due to geographic restrictions for filling prescriptions. Adding pharmacies has also added redundancy and capacity to fill prescriptions and reduced reliance on having a single pharmacy partner. ASPN is now processing inbound prescriptions at a pace that is showing improved patient capture and conversion to reimbursed fills by insurers, and reduced reliance on savings programs.

There were approximately 1,602 new inbound prescriptions into the ASPN reimbursement center during the quarter ended September 30, 2024, which is a slight decrease compared to the quarter ended June 30, 2024. Copay coverage expenses were relatively flat compared to the quarter ended June 30, 2024, as patients have worked through copay deductibles, resulting in an increased proportion of covered prescriptions. Patients who have an opportunity to refill the product (that is, patients who have completed their first fill and have additional refills on their prescription) received a refill approximately 71% of the time. We believe some patients choose not to refill their prescriptions due to remission of symptoms. Cumulatively, new prescribers increased 8% during the quarter ended September 30, 2024.

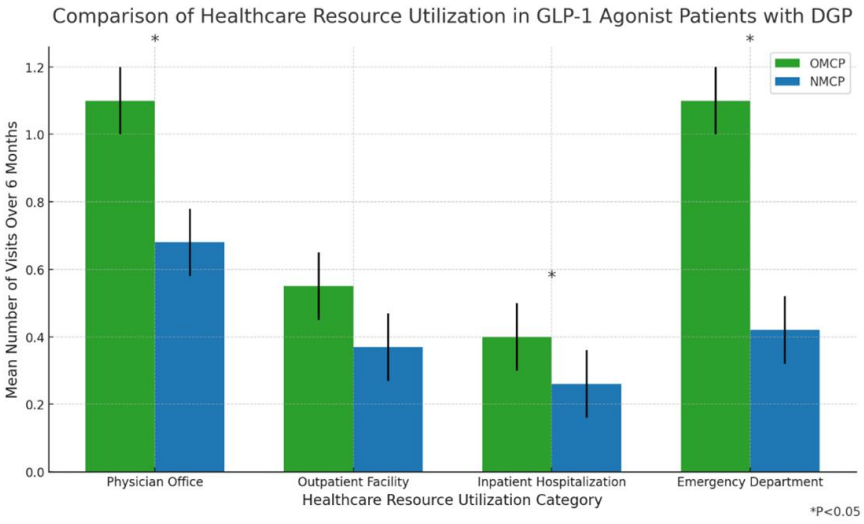


The ASPN team accesses the Medicare and Medicaid systems to facilitate product reimbursement submissions for patients seeking treatment. For the nine months ended September 30, 2024, these government programs made up approximately 34% of the filled prescriptions for Gimoti. From the commercial launch of Gimoti through September 30, 2024, the majority of patients have been between the ages of 31 and 65 years old. The vast majority of patients are female and were being treated by a gastroenterologist, or a nurse practitioner or physician assistant on their staff.

In October 2024, we announced the presentation of data studying diabetic gastroparesis ("DGP") patients using glucagon-like peptide-1 ("GLP-1") receptor agonists and also using GIMOTI (metoclopramide nasal spray) at the American College of Gastroenterology ("ACG") 2024 Annual Meeting. The real-world retrospective study evaluated the impact of GIMOTI in patients with DGP who were concurrently using GLP-1 receptor agonists. GLP-1 drugs are commonly prescribed for type 2 diabetes, and with the significant increase in usage of GLP-1 medications, there have been increasing reports of these drugs exacerbating gastrointestinal symptoms, specifically gastroparesis, due to their mechanism of action which delays gastric emptying. The study compared healthcare resource utilization ("HRU") between patients using GIMOTI nasal metoclopramide ("NMCP") and those on oral metoclopramide ("OMCP"), specifically focusing on individuals with a prior GLP-1 prescription. Adult patients with a DGP diagnosis and at least 6 months of data pre- and post-index (treatment initiation), continuous data were included. Significant reductions in both all-cause and gastroparesis-related office and emergency room visits were observed in patients treated with GIMOTI versus oral metoclopramide.

Key Study Findings Presented at ACG 2024 include-

- Patients with prior GLP-1 history had reduced HRU after taking NMCP.
    - In NMCP patients, all-cause emergency department (ED) visits decreased by 55% (mean [SD]: 0.25 [1.13] post-index vs. 0.55 [1.30] pre-index; P=0.063); and
    - DGP- related ED visits decreased by 28% (mean [SD]: 0.18 [0.99] post-index vs 0.25 [1.28] pre-index; P=0.203)
- In patients taking GLP-1, those that took NMCP had fewer healthcare visits compared to those taking OMCP.
    - All-cause and DGP-related ED visits were 91% lower (cIRR: 0.09, 95% CI: 0.01, 0.42; P=0.001) and 89% lower (cIRR: 0.11, 95% CI: 0, 0.93; P=0.046) for NMCP vs. OMCP; and
    - All-cause and DGP-related office visits were 41% lower (cIRR: 0.59, 95% CI: 0.37, 0.94; P=0.027) and 66% lower (cIRR: 0.34, 95% CI: 0.017, 0.65; P=0.001) for NMCP vs.OMCP.
- NMCP can be used to effectively treat patients with gastroparesis taking GLP-1 treatment and avoid costly healthcare visits.
    - All-cause clinic, outpatient, and inpatient visits showed similar trends favoring NMCP vs. OMCP.
    - In DGP patients with a prior claim for GLP-1, NMCP use was associated with numerically and significantly reduced all-cause and DGP-related HRU compared to pre-treatment utilization and OMCP-treated controls.



The study's specific cohort consisted of 92 total patients between the nasal metoclopramide (NMCP, N=51) and oral metoclopramide (OMCP, N=41) groups. The NMCP group had a slightly older average age (55.1 years) compared to the OMCP group (53.1 years). A notable portion of the NMCP group (31.4%) had experienced hospitalizations or emergency department visits prior to treatment, compared to 19.5% in the OMCP group.

A separate post-hoc analysis focused on safety data for a female subgroup from a previous Phase 3 study that included 36 women using GLP-1 drugs during the 28-day study. The patients had an average age of 51.4 years, with 67% identifying as Caucasian and 33% as Black. Among these, 13 were treated with GIMOTI and 23 with placebo. The majority (94%) of the participants completed the study, with no serious adverse events reported in either group. This analysis indicated no series safety issues and a trend toward nausea improvement when GLP-1 drugs were used with NMCP.

Key Opinion Leaders, or KOLs, are actively presenting data regarding the safety profile for Gimoti. Data presented at the May 2024 Digestive Disease Week indicated a far lower incidence of tardive dyskinesia, or TD, than previously published. This retrospective data was generated from a U.S. based database covering over 270 million patient lives. The outcome showed a 0.12% incidence of TD for gastroparesis patients taking any form of metoclopramide for any diagnosis.

At the May 2023 Digestive Disease Week conference, a head-to-head (oral v. nasal metoclopramide), real world evidence data in 514 patients was presented. Compared to patients in the oral metoclopramide cohort, patients taking Gimoti experienced fewer visits to a physician's office and emergency room (60% reduction), and had fewer inpatient admissions (68% reduction). This was elevated to the top plenary presentation for the conference by the clinical gastroenterology selection committee for the conference. To our knowledge, this study is the first such head-to-head data ever to be presented regarding the product and a clear support for improved outcomes for patients using Gimoti. This data was further validated in October 2023 at the American College of Gastroenterology conference, when the related cost data was presented at a plenary session showing a $15,000 savings for those patients taking Gimoti compared to oral metoclopramide over the six-month period following initiation of therapy. These data have recently been provided to our commercialization field force to inform physicians and payers of the potential benefits seen in these real-world trials.

Research and Development Expenses

We expense all research and development expenses as they are incurred. Research and development expenses primarily include:

- clinical and regulatory-related costs;
- expenses incurred under agreements with contract research organizations, or CROs;
- manufacturing and stability testing costs and related supplies and materials used in clinical trials; and
- employee-related expenses, including salaries, benefits, travel and stock-based compensation expense.

All of our research and development expenses to date have been incurred in connection with the development of Gimoti. Since FDA approval of Gimoti in June 2020, research and development costs have decreased and shifted to commercialization and selling costs. We are in discussion with FDA related to the design, for an FDA post-marketing commitment single-dose PK clinical trial of Gimoti to characterize dose proportionality of a lower dose strength of Gimoti to accommodate patients that may require further dosage adjustments. We are unable to estimate with any certainty the costs we will incur related to this trial, or the regulatory review of such lower dose of Gimoti, though such costs may be significant and will substantially increase research and development expenses once this trial is initiated. We may also incur additional costs to the extent we pursue additional clinical trials to expand the indication of Gimoti. Clinical development timelines, the probability of success and development costs can differ materially from expectations.

The costs of clinical trials may vary significantly over the life of a project owing to, but not limited to, the following:

- per subject trial costs;
- the number of sites included in the trials;
- the length of time required to enroll eligible subjects;
- the number of subjects that participate in the trials;
- the number of doses that subjects receive;
- the cost of comparative agents used in trials;
- the drop-out or discontinuation rates of subjects;
- potential additional safety monitoring or other studies requested by regulatory agencies; and
- the duration of patient follow-up.

Selling, General and Administrative Expenses

Selling, general and administrative expenses consist primarily of salaries and related benefits, including stock-based compensation. Other selling, general and administrative expenses include professional fees for accounting, tax, patent costs, legal services, insurance, facility costs and costs associated with being a publicly-traded company, including fees associated with investor relations and directors and officers liability insurance premiums. We expect that selling, general and administrative expenses will increase in the future as we continue to progress with the commercialization of Gimoti and we reimburse Eversana from the net profits attained from the sales of Gimoti.

Critical Accounting Policies and Significant Judgments and Estimates

Our management's discussion and analysis of our financial condition and results of operations is based on our condensed financial statements, which we have prepared in accordance with generally accepted accounting principles in the United States, or GAAP. The preparation of these financial statements requires us to make estimates and assumptions that affect the reported amounts of assets and liabilities and the disclosure of contingent assets and liabilities at the date of the condensed financial statements, as well as the reported expenses during the reporting periods. We evaluate these estimates and judgments on an ongoing basis. We base our estimates on historical experience and on various other factors that we believe are reasonable under the circumstances, the results of

which form the basis for making judgments about the carrying value of assets and liabilities that are not readily apparent from other sources. Our actual results may differ materially from these estimates under different assumptions or conditions.

There have been no new or significant changes to our critical accounting policies and estimates discussed in Management's Discussion and Analysis of Financial Condition and Results of Operations included in our Annual Report on Form 10-K/A for the year ended December 31, 2023, filed with the SEC on May 14, 2024, except as it relates to the fair value of warrants as discussed below.

Fair Value of Warrants

Upon issuance and modification, warrants are measured at fair value and reviewed for the appropriate classification (liability or equity). Equity classified warrants are valued using an option pricing model (OPM), such as a Black-Scholes, based on the applicable assumptions, or a Monte-Carlo simulation to model the future stock price as an input to a Black-Scholes model for combined warrants. We re-evaluate the classification of our warrants at each subsequent quarterly period end date while the warrants are outstanding to determine the proper balance sheet classification. The assumptions used in the OPM include, but are not limited to, the market price of our common stock, which is a level 1 assumption, our volatility and the risk-free interest rate, which are level 2 assumptions, and the dividend yield and the expected term the warrants will be held prior to exercise, which are level 3 assumptions.

Results of Operations

Comparison of Three Months Ended September 30, 2024 and 2023

The following table summarizes the results of our operations:

	Three Months Ended September 30,			
	2024	2023	$ Change	% Change
Net product sales	$ 2,654,186	$ 1,562,860	$ 1,091,326	70%
Cost of goods sold	$ 104,024	$ 34,908	$ 69,116	198%
Research and development expenses	$ 11,677	$ —	$ 11,677	—
Selling, general and administrative expenses	$ 3,824,142	$ 3,131,389	$ 692,753	22%

Net Product Sales. Net product sales for the three months ended September 30, 2024 compared to the three months ended September 30, 2023 increased by approximately $1.1 million. The increase in product sales is due to increased product adoption as commercialization efforts continue, expanded pharmacy networks, and a greater number of physicians within larger gastroenterology teams prescribing Gimoti after first-physician adoption.

Cost of Goods Sold. Cost of goods sold for the three months ended September 30, 2024 compared to the three months ended September 30, 2023 increased by approximately $0.1 million due to the timing of completion of stability testing on commercial batches of Gimoti.

Research and Development Expenses. Research and development expenses for the three months ended September 30, 2024 compared to the three months ended September 30, 2023 increased due to personnel-related costs.

Selling, General and Administrative Expenses. Selling, general and administrative expenses for the three months ended September 30, 2024 compared to the three months ended September 30, 2023 increased by approximately $0.7 million. Costs incurred during the three months ended September 30, 2024 primarily included approximately $0.7 million for wages, taxes and employee insurance, including approximately $0.1 million of stock-based compensation expense, approximately $2.5 million for marketing and Eversana profit sharing, and approximately $0.5 million for legal, accounting, directors and officers liability insurance and other costs associated with being a public company. Costs incurred during the three months ended September 30, 2023 primarily included approximately $1.0 million for wages, taxes and employee insurance, including approximately $0.3 million of stock-based compensation expense, approximately $1.5 million for marketing and Eversana profit sharing, and approximately $0.6 million for legal, accounting, directors and officers liability insurance and other costs associated with being a public company.

Comparison of Nine Months Ended September 30, 2024 and 2023

The following table summarizes the results of our operations:

	Nine Months Ended September 30,			
	2024	2023	$ Change	% Change
Net product sales	$ 6,941,042	$ 3,504,636	$ 3,436,406	98%
Cost of goods sold	$ 238,031	$ 142,855	$ 95,176	67%
Research and development expenses	$ 16,322	$ 159,347	$ (143,025)	-90%
Selling, general and administrative expenses	$ 10,697,128	$ 8,745,407	$ 1,951,721	22%

Net Product Sales. Net product sales for the nine months ended September 30, 2024 compared to the nine months ended September 30, 2023 increased by approximately $3.4 million. The increase in product sales is due to increased product adoption as commercialization efforts continue, expanded pharmacy network, and a greater number of physicians within larger gastroenterology teams prescribing Gimoti after first-physician adoption.

Cost of Goods Sold. Cost of goods sold for the nine months ended September 30, 2024 compared to the nine months ended September 30, 2023 increased by approximately $0.1 million, primarily due to the timing of completion of stability testing on commercial batches of Gimoti.

Research and Development Expenses. Research and development expenses for the nine months ended September 30, 2024 compared to the nine months ended September 30, 2023 decreased by approximately $0.1 million due to fewer expenses for ongoing stability testing of batches of Gimoti manufactured prior to receipt of FDA approval of the Gimoti NDA in June 2020.

Selling, General and Administrative Expenses. Selling, general and administrative expenses for the nine months ended September 30, 2024 compared to the nine months ended September 30, 2023 increased by approximately $2.0 million. Costs incurred during the nine months ended September 30, 2024 primarily included approximately $2.3 million for wages, taxes and employee insurance, including approximately $0.5 million of stock-based compensation expense, approximately $6.5 million for marketing and Eversana profit sharing, and approximately $1.6 million for legal, accounting, directors and officers liability insurance and other costs associated with being a public company. Costs incurred during the nine months ended September 30, 2023 primarily included approximately $3.0 million for wages, taxes and employee insurance, including approximately $0.8 million of stock-based compensation expense, approximately $3.4 million for marketing and Eversana profit sharing, and approximately $1.9 million for legal, accounting, directors and officers liability insurance and other costs associated with being a public company.

Liquidity and Capital Resources

The financial statements have been prepared assuming the Company will continue as a going concern, which contemplates the realization of assets and the satisfaction of liabilities in the normal course of business. The Company has incurred recurring losses and negative cash flows from operations since inception and expects to continue to incur net losses for the foreseeable future until such time, if ever, that it can generate significant revenues from the sale of Gimoti. As of September 30, 2024, the Company had approximately $11.3 million in cash and cash equivalents. The Company anticipates that it will continue to incur losses from operations due to commercialization activities, including manufacturing Gimoti, conducting the post-marketing commitment single-dose pharmacokinetics (“PK”) clinical trial of Gimoti to characterize dose proportionality of a lower dose strength of Gimoti, and for other general and administrative costs to support the Company’s operations. Both the Company and Eversana may terminate the commercial services agreement pursuant to the Net Profit Quarterly Termination Right (NPQTR) (as defined in Note 4); however, the Company has no intent to terminate the Eversana Agreement. Although Eversana has not exercised its right pursuant to the NPQTR, and we believe it has no intent to do so, there can be no assurance it won’t. Should Eversana exercise its right under the NPQTR, the Commercial Services and Loan Agreement, as described in Note 4 – Commercial Services and Loan Agreement with Eversana, would also be terminated and the Company would be responsible to repay the principal and interest on the loan, which amounted to $7.0 million as of September 30, 2024, within 90 days. As a result, the Company believes that there is substantial doubt about its ability to continue as a going concern for one year after the date these financial statements are issued. The financial statements do not include any adjustments that may result from the outcome of this uncertainty.

The Company anticipates that it will be required to raise additional funds through debt, equity or other forms of financing, such as potential collaboration arrangements, to fund future operations and continue as a going concern on a short-term and long-term basis while it achieves profitability. There can be no assurance that additional financing will be available when needed or on acceptable terms. Because our business is entirely dependent on the success of Gimoti, if we are unable to secure additional financing or identify and execute on other development or strategic alternatives for Gimoti or our company, we will be required to curtail all of our activities and may be required to liquidate, dissolve or otherwise wind down our operations.

Recent Events

In February 2024, we sold 427,886 common stock units (the “Common Stock Units”), at a public offering price of $8.16 per Common Stock Unit and, to certain investors, 491,221 pre-funded warrant units (the “PFW Units”), at a public offering price of $8.1588 per PFW Unit. Each Common Stock Unit consists of (i) one share of common stock, (ii) a Series A Warrant to purchase one share of common stock (the “Series A Warrant”), (iii) a Series B Warrant to purchase one share of common stock (the “Series B Warrant”), and (iv) a Series C Warrant to purchase one share of common stock (the “Series C Warrant”). Each PFW Unit consists of (i) a pre-funded warrant to purchase one share of common stock, (ii) a Series A Warrant, (iii) a Series B Warrant, and (iv) a Series C Warrant. After deducting underwriting discounts and commissions and offering expenses paid by us, the estimated net proceeds to us from this offering were approximately $6.2 million.

As discussed in *Note 3 – Stockholders’ Equity,* during March, June and September 2024, we amended certain warrant agreements with our Series B and Series C warrant holders (the Warrant Amendments). Pursuant to the Warrant Amendments to the extend a warrant holder exercised their Series B warrants prior to their respective exercise deadlines, as defined in the amendment documents (the

"Amendment Exercise Deadline"), the holders corresponding Series C Warrants vested and became exercisable for the lesser of (i) three times the number of Series B Warrants exercised by the holder and (ii) the total number of Series C Warrants outstanding to the holder. Following each Amendment Exercise Deadline, if such holder exercised any remaining Series B Warrants, the remaining Series C Warrants, if any, vested and became exercisable on a one-for-one basis as to the same number of Series B Warrants exercised. The Warrant Amendments allowed a holder to elect to receive Pre-Funded Warrants upon exercise of Series B Warrants and Series C Warrants in lieu of shares of the our common stock, at a purchase price of $8.1588 per warrant exercised and an exercise price of $0.0012 per Pre-Funded Warrant. Net cash proceeds from the March, June and September 2024 Warrant Amendment were $1.2 million, $0.3 million and $0.4 million, respectively, after deducting underwriter commissions and offering expenses. The Series B Warrants will expire on November 13, 2024, which is nine months from the date of issuance. The Series C Warrants will also expire on November 13, 2024, provided that to the extent and in proportion to a holder of the Series C Warrants exercising its corresponding Series B Warrants included in the applicable unit, such Series C Warrant will expire on February 13, 2029.

In September 2024, we entered into an amendment with certain holders of our Series A Warrants, Series B Warrants and Series C Warrants (the "September 2024 Exercise Price Warrant Amendment"), pursuant to which such holders agreed to pay $3.99 per Series A Warrant or Series C Warrant to reduce the exercise price of the Series A Warrants and Series C Warrants from $8.16 to $0.01. To the extent the holder did not elect to modify all outstanding Series A Warrants and Series C Warrants, the remaining Series A Warrants and Series C Warrants held by each holder retained an exercise price of $8.16 per Series A Warrant or Series C Warrant. Net proceeds from the September 2024 Exercise Price Warrant Amendment were approximately $2.5 million

Sources and Uses of Our Cash

The following table summarizes our cash flows:

	Nine Months Ended September 30,		
	2024	2023	$ Change
Net cash used in operating activities	$ (4,218,700)	$ (3,878,873)	$ (339,827)
Net cash provided by financing activities	$ 10,818,306	$ —	$ 10,818,306
Net increase (decrease) in cash and cash equivalents	$ 6,599,606	$ (3,878,873)	$ 10,478,479

Operating Activities. The primary use of our cash has been to fund our clinical research, prepare our NDA, manufacture Gimoti, commercial sales of Gimoti, and other general operations. The cash used in operating activities during the nine months ended September 30, 2024 and 2023 was primarily related to commercialization activities for Gimoti and other general operational activities. We expect that cash used in operating activities during the remainder of 2024 will be in-line with cash used during similar periods in 2023 because growing sales are expected to offset commercialization activities, including manufacturing Gimoti, and the planned post-marketing commitment to conduct a single-dose PK clinical trial of Gimoti to characterize dose proportionality of a lower dose strength of Gimoti.

Financing Activities. During the nine months ended September 30, 2024, cash provided by financing activities was $10.8 million primarily due to the sale of 513,424 shares of common stock at $8.16 per share, 683,475 Pre-Funded Warrants at $8.1588 per share, and 373,176 Series A Warrants and 250,627 Series C Warrants at $3.99 per share in connection with the September 2024 Exercise Price Warrant Amendment.

Capital Resource Requirements

On October 16, 2024, we entered into the Seventh Amendment to our existing lease agreement, to amend the office lease agreement. The Seventh Amendment Extends the term of the lease from October 31, 2024 to March 31, 2027. The Seventh Amendment provides for an initial monthly base rent of approximately $6,500, with stated escalation clauses each November first through the lease term. We are also responsible for common area maintenance costs associated with the leased space.

The amount and timing of our future funding requirements will depend on many factors, including but not limited to:

- the costs of commercialization activities, including costs associated with commercial manufacturing;
- the commercial success of Gimoti, including competition with well-established products approved earlier by FDA, including oral and intravenous forms of metoclopramide, the same active ingredient in the nasal spray for Gimoti;
- our ability to manufacture sufficient quantities of Gimoti to meet demand, including whether our contract manufacturers, suppliers, and/or consultants are able to meet appropriate timelines;
- the progress and costs of the post-marketing commitment to conduct a single-dose PK clinical trial of Gimoti to characterize dose proportionality of a lower dose strength of Gimoti and the costs of any additional clinical trials we may pursue to expand the indication of Gimoti;
- our ability to obtain, maintain and enforce our patents and other intellectual property rights, and the costs incurred to do so;

- the terms and timing of any collaborative, licensing, co-promotion or other arrangements that we may establish; and
- costs associated with any other product candidates that we may develop, in-license or acquire.

We expect to continue to incur expenses as we:

- continue the commercial activities for Gimoti;
- manufacture Gimoti;
- conduct the post-marketing commitment single-dose PK clinical trial of Gimoti and any additional development activities should we seek additional indications;
- maintain, expand and protect our intellectual property portfolio; and
- continue to fund the accounting, legal, insurance and other costs associated with being a public company.

Item 3. Quantitative and Qualitative Disclosure about Market Risk

As a smaller reporting company, we are not required to provide the information required by this Item.

Item 4. Controls and Procedures

Conclusions Regarding the Effectiveness of Disclosure Controls and Procedures

We maintain disclosure controls and procedures that are designed to ensure that information required to be disclosed in our Exchange Act reports is recorded, processed, summarized and reported within the timelines specified in the SEC's rules and forms, and that such information is accumulated and communicated to our management, including our Chief Executive Officer, as appropriate, to allow timely decisions regarding required disclosure. In designing and evaluating the disclosure controls and procedures, management recognized that any controls and procedures, no matter how well designed and operated, can only provide reasonable assurance of achieving the desired control objectives, and in reaching a reasonable level of assurance, management necessarily was required to apply its judgment in evaluating the cost-benefit relationship of possible controls and procedures. In addition, the design of any system of controls also is based in part upon certain assumptions about the likelihood of future events, and there can be no assurance that any design will succeed in achieving its stated goals under all potential future conditions; over time, control may become inadequate because of changes in conditions, or the degree of compliance with policies or procedures may deteriorate. Because of the inherent limitations in a cost-effective control system, misstatements due to error or fraud may occur and not be detected.

As required by SEC Rule 13a-15(e), as of September 30, 2024, we carried out an evaluation, under the supervision and with the participation of our management, including our Chief Executive Officer, of the effectiveness of the design and operation of our disclosure controls and procedures, as of the end of the period covered by this report. Management identified a material weakness in our internal control over financial reporting related to ineffectively designed controls over review of the Eversana Credit Facility, ongoing compliance monitoring and the proper application of GAAP for such agreement.

Based on the foregoing, our Chief Executive Officer concluded that our disclosure controls and procedures were not effective at the reasonable assurance level as of September 30, 2024, due to the material weakness described above. The material weakness will not be considered remediated until the enhanced controls operate for a sufficient period of time, and management is able to conclude, through testing, that the related controls are effective. Therefore, the material weakness existed as of September 30, 2024.

Remediation Plan

Our management, under the oversight of the Audit Committee, has developed a remediation plan which includes, but is not limited to, designing controls over review over debt contracts, including the Eversana Credit Facility, ongoing compliance monitoring and the proper application of GAAP for such agreement. To strengthen our review procedures, we have engaged external support with extensive U.S. GAAP knowledge to advise on technical accounting and financial reporting matters. We will monitor the effectiveness of its remediation plan and will refine its remediation plan as appropriate.

Changes in Internal Control Over Financial Reporting

There were no changes in our internal control over financial reporting identified in management's evaluation pursuant to Rules 13a-15(d) of the Exchange Act during the quarter ended September 30, 2024, that materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

PART II. OTHER INFORMATION

Item 1. Legal Proceedings

None.

Item 1A. Risk Factors

There have been no material changes to the risk factors included in "Part I, Item 1A. Risk Factors" in our Annual Report on Form 10-K/A for the fiscal year ended December 31, 2023, filed with the SEC on May 14, 2024 and in "Part II, Item 1A. Risk Factors" in our Quarterly Report on Form 10-Q for the quarter ended June 30, 2024 filed with the SEC on August 13, 2024.

Item 2. Unregistered Sales of Equity Securities and Use of Proceeds

None.

Item 3. Defaults Upon Senior Securities

None.

Item 4. Mine Safety Disclosures

Not applicable.

Item 5. Other Information

During the three months ended September 30, 2024, none of our officers or directors adopted, modified or terminated any contract, instruction or written plan for the purchase or sale of our securities that was intended to satisfy the affirmative defense conditions of Rule 10b5-1(c) or any non Rule 10b5-1 trading arrangement.

Item 6. Exhibits

Index to Exhibits

Exhibit Number	Description of Exhibit	Form	File Number	Date of Filing	Exhibit Number	Filed Herewith
3.1	Amended and Restated Certificate of Incorporation of the Company	8-K	001-36075	9/30/2013	3.1	
3.2	Certificate of Amendment of Amended and Restated Certificate of Incorporation of the Company	8-K	001-36075	5/20/2022	3.1	
3.3	Certificate of Amendment of Amended and Restated Certificate of Incorporation of the Company	10-Q	001-36075	8/13/2024	3.3	
3.4	Certificate of Amendment of Amended and Restated Certificate of Incorporation of the Company	8-K	001-36075	8/1/2024	3.1	
3.5	Amended and Restated Bylaws of the Company	8-K	001-36075	9/30/2013	3.2	
4.1	Form of Pre-Funded Warrant	S-1/A	333-275443	12/15/2023	4.2	
4.2	Form of Series A Warrant	S-1/A	333-275443	1/11/2024	4.3	
4.3	Form of Series B Warrant	S-1/A	333-275443	1/11/2024	4.4	
4.4	Form of Series C Warrant	S-1/A	333-275443	1/11/2024	4.5	
4.5	Form of Representative Warrant	S-1/A	333-275443	2/14/2024	4.1	
4.6	Form of Warrant Amendment	8-K	001-36075	3/25/2024	4.1	
4.7	Form of Warrant Amendment	8-K	001-36075	6/20/2024	4.1	
4.8	Form of Exercise Price Warrant Amendment	8-K	001-36075	9/27/2024	4.1	
4.9	Form of Series C Vesting Warrant Amendment	8-K	001-36075	9/27/2024	4.2	
10.1	Second Amended and Restated Employment Agreement, effective as of August 8, 2024, by and between the Company and Matthew D'Onofrio					X
10.2	Amended and Restated Employment Agreement, effective as of August 8, 2024, by and between the Company and Mark Kowieski					X
10.3	Amended and Restated Employment Agreement, effective as of August 8, 2024, by and between the Company and Marilyn Carlson, M.D.					X
10.4	Seventh Amendment to Standard Office Lease, dated October 16, 2024, by and between the Company and SB Corporate Centre III-IV, LLC					X
10.5	Letter Agreement, dated September 27, 2024, by and between the Company and certain affiliates of Nantahala Capital Management, LLC	8-K	001-36075	9/27/2024	10.1	
31.1	Certification of Principal Executive Officer pursuant to Rules 13a-14 and 15d-14 promulgated under the Securities Exchange Act of 1934					X

Exhibit Number	Description of Exhibit	Form	File Number	Date of Filing	Exhibit Number	Filed Herewith
31.2	Certification of Principal Financial Officer pursuant to Rules 13a-14 and 15d-14 promulgated under the Securities Exchange Act of 1934					X
32.1*	Certification of Principal Executive Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002					X
32.2*	Certification of Principal Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002					X
101.INS	Inline XBRL Instance Document – the instance document does not appear in the Interactive Data File because its XBRL tags are embedded within the inline XBRL document					X
104	Cover Page Interactive Data File (formatted as inline XBRL and contained in Exhibit 101)					X

* This certification is being furnished solely to accompany this quarterly report pursuant to 18 U.S.C. Section 1350, and is not being filed for purposes of Section 18 of the Securities Exchange Act of 1934 and are not to be incorporated by reference into any filing of Company, whether made before or after the date hereof, regardless of any general incorporation language in such filing.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

Evoke Pharma, Inc.

Date: November 7, 2024

By: /s/ Matthew J. D'Onofrio

Matthew J. D'Onofrio
Chief Executive Officer
(Principal Executive Officer)

Evoke Pharma, Inc.

Date: November 7, 2024

By: /s/ Mark Kowieski

Mark Kowieski
Chief Financial Officer
(Principal Financial and Accounting Officer)

Exhibit 10.1

SECOND AMENDED AND RESTATED EMPLOYMENT AGREEMENT

THIS SECOND AMENDED AND RESTATED EMPLOYMENT AGREEMENT (this "Agreement") is entered into by and between Evoke Pharma, Inc., a Delaware corporation (the "Company"), and Matthew D'Onofrio ("Executive"), and shall be effective as of August 8, 2024 (the "Effective Date").

WHEREAS, Executive and the Company are parties to that certain Amended and Restated Employment Agreement dated as of June 7, 2013 (the "Original Agreement"); and

WHEREAS, Executive and the Company desire to amend and restate the Original Agreement on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual promises herein contained, the parties agree as follows:

1. Definitions. As used in this Agreement, the following terms shall have the following meanings:

(a) Board. "Board" means the Board of Directors of the Company.

(b) Bonus. "Bonus" means an amount equal to the greater of (i) Executive's target annual bonus for the fiscal year in which the date of termination occurs, or (ii) the bonus awarded to Executive for the fiscal year prior to the date of termination (which bonus shall be annualized to the extent Executive was not employed for the entire fiscal year prior to the date of termination). If any portion of the bonuses awarded to Executive consisted of securities or other property, the fair market value thereof shall be determined in good faith by the Board.

(c) Cause. "Cause" means any of the following:

(i) the commission of an act of fraud, embezzlement or dishonesty by Executive that has a material adverse impact on the Company or any successor or affiliate thereof;

(ii) a conviction of, or plea of "guilty" or "no contest" to, a felony by Executive;

(iii) any unauthorized use or disclosure by Executive of confidential information or trade secrets of the Company or any successor or affiliate thereof that has a material adverse impact on any such entity;

(iv) Executive's gross negligence, insubordination or material violation of any duty of loyalty to the Company or any other material misconduct on the part of Executive;

(v) Executive's ongoing and repeated failure or refusal to perform or neglect of Executive's duties as required by this Agreement, which failure, refusal or neglect continues for fifteen (15) days following Executive's receipt of written notice from the Board stating with specificity the nature of such failure, refusal or neglect; or

(vi) Executive's breach of any material provision of this Agreement;

provided, however, that prior to the determination that "Cause" under this Section 1(c) has occurred (other than clauses (ii) and (v)), the Company shall (w) provide to Executive in writing, in reasonable detail, the reasons for the determination that such "Cause" exists, (x) other than with respect to clause (v) above which specifies the applicable period of time for Executive to remedy his breach, afford Executive a reasonable opportunity to remedy any such breach, (y) provide the Executive an opportunity to be heard prior to the final decision to terminate the Executive's employment hereunder for such "Cause" and (z) make any decision that such "Cause" exists in good faith.

The foregoing definition shall not in any way preclude or restrict the right of the Company or any successor or affiliate thereof to discharge or dismiss Executive for any other acts or omissions, but such other acts or omissions shall not be deemed, for purposes of this Agreement, to constitute grounds for termination for Cause.

(d) Change of Control. "Change of Control" means and includes each of the following:

(i) the acquisition, directly or indirectly, by any "person" or "group" (as those terms are defined in Sections 3(a)(9), 13(d), and 14(d) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and the rules thereunder) of "beneficial ownership" (as determined pursuant to Rule 13d-3 under the Exchange Act) of securities entitled to vote generally in the election of directors ("voting securities") of the Company that represent 50% or more of the combined voting power of the Company's then outstanding voting securities, other than:

(1) an acquisition by a trustee or other fiduciary holding securities under any employee benefit plan (or related trust) sponsored or maintained by the Company or any person controlled by the Company or by any employee benefit plan (or related trust) sponsored or maintained by the Company or any person controlled by the Company, or

(2) an acquisition of voting securities by the Company or a corporation owned, directly or indirectly, by the stockholders of the Company in substantially the same proportions as their ownership of the stock of the Company, or

(3) an acquisition of voting securities pursuant to a transaction described in Section 1(d)(ii) below that would not be a Change of Control under Section 1(d)(ii);

Notwithstanding the foregoing, the following event shall not constitute an "acquisition" by any person or group for purposes of this Section 1(d): an acquisition of the Company's securities by the Company which causes the Company's voting securities beneficially owned by a person or group to represent 50% or more of the combined voting power of the Company's then outstanding voting securities; provided, however, that if a person or group shall become the beneficial owner of 50% or more of the combined voting power of the Company's then outstanding voting securities by reason of share acquisitions by the Company as described above and shall, after such share acquisitions by the Company, become the beneficial owner of any additional voting securities of the Company, then such acquisition shall constitute a Change of Control; or

(ii) the consummation by the Company (whether directly involving the Company or indirectly involving the Company through one or more intermediaries) of a merger, consolidation, reorganization, or business combination, a sale or other disposition of all or substantially all of the Company's assets, or the acquisition of assets or stock of another entity, in each case, other than a transaction:

(1) which results in the Company's voting securities outstanding immediately before the transaction continuing to represent (either by remaining outstanding or by being converted into voting securities of the Company or the person that, as a result of the transaction, controls, directly or indirectly, the Company or owns, directly or indirectly, all or substantially all of the Company's assets or otherwise succeeds to the business of the Company (the Company or such person, the "Successor Entity")) directly or indirectly, at least 50% of the combined voting power of the Successor Entity's outstanding voting securities immediately after the transaction, and

(2) after which no person or group beneficially owns voting securities representing 50% or more of the combined voting power of the Successor Entity; provided, however, that no person or group shall be treated for purposes of this subsection (d)(ii) as beneficially owning 50% or more of combined voting power of the Successor Entity solely as a result of the voting power held in the Company prior to the consummation of the transaction; or

(iii) the Company's stockholders approve a liquidation or dissolution of the Company.

Notwithstanding the foregoing, a transaction shall not constitute a "Change of Control" if: (i) its sole purpose is to change the state of the Company's incorporation; (ii) its sole purpose is to create a holding company that will be owned in substantially the same proportions by the persons who held the Company's securities immediately before such transaction; or (iii) it is a transaction effected primarily for the purpose of financing the Company with cash (as determined by the Board in its discretion and without regard to whether such transaction is effectuated by a merger, equity financing or otherwise). The Board shall have full and final authority, which shall be exercised in its sole discretion, to determine conclusively whether a Change of Control of the Company has occurred pursuant to the above definition, and the date of the occurrence of such Change of Control and any incidental matters relating thereto.

(e) Code. "Code" means the Internal Revenue Code of 1986, as amended from time to time, and the Treasury Regulations and other interpretive guidance issued thereunder.

(f) Good Reason. "Good Reason" means the occurrence of any of the following events or conditions without Executive's written consent and the failure of the Company or any successor or affiliate to cure such event or condition within thirty (30) days after receipt of written notice from Executive:

(i) a change in Executive's status, position or responsibilities that, in Executive's reasonable judgment, represents a substantial and material reduction in the status, position or responsibilities as in effect immediately prior thereto; the assignment to Executive of any duties or responsibilities that, in Executive's reasonable judgment, are materially inconsistent with such status, position or responsibilities; or any removal of Executive from or failure to reappoint or reelect Executive to any of such positions, except in connection with the termination of Executive's employment for Cause, as a result of his Permanent Disability or death, or by Executive other than for Good Reason;

(ii) a material reduction in Executive's annual base salary, except in connection with a general reduction in the compensation of the Company's or any successor's or affiliate's personnel with similar status and responsibilities;

(iii) the Company's or any successor's or affiliate's requiring Executive (without Executive's consent) to be based at any place outside a 50-mile radius of his place of employment as of the Effective Date, except for reasonably required travel on the Company's or any successor's or affiliate's business that is not materially greater than such travel requirements prior to the Effective Date;

(iv) the Company's or any successor's or affiliate's failure to provide Executive with compensation and benefits substantially equivalent (in terms of benefit levels and/or reward opportunities) to those provided for under each material employee benefit plan, program and practice as in effect immediately prior to the Effective Date;

(v) any material breach by the Company or any successor or affiliate of its obligations to Executive under this Agreement;

(vi) any purported termination of Executive's employment or service relationship for Cause by the Company or any successor or affiliate that is not in accordance with the definition of Cause set forth in this Agreement; or

(vii) a Change of Control.

(g) Involuntary Termination. "Involuntary Termination" means (i) the Executive's Separation from Service by reason of Executive's discharge by the Company other than for Cause, or (ii) the Executive's Separation from Service by reason of Executive's resignation of employment with the Company for Good Reason. Executive's Separation from Service by reason of Executive's death or discharge by the Company following Executive's Permanent Disability shall not constitute an Involuntary Termination.

(h) Permanent Disability. Executive's "Permanent Disability" shall be deemed to have occurred if Executive shall become physically or mentally incapacitated or disabled or otherwise unable fully to discharge his duties hereunder for a period of ninety (90) consecutive calendar days or for one hundred twenty (120) calendar days in any one hundred eighty (180) calendar-day period. The existence of Executive's Permanent Disability shall be determined by the Company on the advice of a physician chosen by the Company and the Company reserves the right to have the Executive examined by a physician chosen by the Company at the Company's expense.

(i) Separation from Service. Executive's Separation from Service means his "separation from service," within the meaning of Section 409A(a)(2)(A)(i) of the Code and Treasury Regulation Section 1.409A-1(h) thereunder.

(j) Stock Awards. "Stock Awards" means all stock options, restricted stock and such other awards granted pursuant to the Company's stock option and equity incentive award plans or agreements and any shares of stock issued upon exercise thereof.

2. Services to Be Rendered.

(a) Duties and Responsibilities. Executive shall continue to serve as the Chief Executive Officer of the Company. In the performance of such duties, Executive shall report directly to the Board and shall be subject to the direction of the Board and to such limits upon Executive's authority as the Board may from time to time impose. Executive hereby consents to serve as an officer and/or director of the Company or any subsidiary or affiliate thereof without any additional salary or compensation. Executive shall be employed by the Company on a full time basis. Executive's primary place of work shall be the Company's facility in San Diego, California, or such other location within San Diego County as may be designated by the Board from time to time. Executive shall also render services at such other places within or outside the United States as the Board may direct from time to time. Executive shall be subject to and comply with the policies and procedures generally applicable to senior executives of the Company to the extent the same are not inconsistent with any term of this Agreement.

(b) Exclusive Services. Executive shall at all times faithfully, industriously and to the best of his ability, experience and talent perform to the satisfaction of the Board all of the duties that may be assigned to Executive hereunder and shall devote substantially all of his productive time and efforts to the performance of such duties. Subject to the terms of the Employee Proprietary Information and Inventions Agreement referred to in Section 5(b), this shall not preclude Executive from devoting time to personal and family investments or serving on community and civic boards, or participating in industry associations, provided such activities do not interfere with his duties to the Company, as determined in good faith by the Board. Executive agrees that he will not join any boards, other than community and civic boards (which do not interfere with his duties to the Company), without the prior approval of the Board.

3. Compensation and Benefits. The Company shall pay or provide, as the case may be, to Executive the compensation and other benefits and rights set forth in this Section 3.

(a) Base Salary. The Company shall pay to Executive a base salary of $615,000 per year, payable in accordance with the Company's usual pay practices (and in any event no less frequently than monthly). Executive's base salary shall be subject to review annually by and at the sole discretion of the Compensation Committee of the Board or its designee.

(b) Bonus. In addition to the base salary, Executive shall be eligible to earn, for each fiscal year of the Company ending during the term of Executive's employment with the Company, an annual cash performance bonus (an "Annual Bonus") under the Company's bonus plan or plans applicable to senior executives. For each year during the term of this Agreement, Executive's target Annual Bonus shall be 60% of his base salary actually paid for such year. Executive's actual Annual Bonus shall be determined on the basis of Executive's and/or the Company's attainment of financial or other performance criteria established by the Board, or the Compensation Committee thereof, in accordance with the terms and conditions of such bonus plan(s). Except as otherwise provided in Section 4, Executive must be employed by the Company on the date of payment of such Annual Bonus in order to be eligible to receive such Annual Bonus.

(c) Benefits. Executive shall be entitled to participate in benefits under the Company's other benefit plans and arrangements, including, without limitation, any employee benefit plan or arrangement made available in the future by the Company to its senior executives, subject to and on a basis consistent with the terms, conditions and overall administration of such plans and arrangements. The Company shall have the right to amend or delete any such benefit plan or arrangement made available by the Company to its senior executives and not otherwise specifically provided for herein.

(d) Expenses. The Company shall reimburse Executive for reasonable out-of-pocket business expenses incurred in connection with the performance of his duties hereunder, subject to (i) such policies as the Company may from time to time establish, and (ii) Executive furnishing the Company with evidence in the form of receipts satisfactory to the Company substantiating the claimed expenditures. Any amounts payable under this Section 3(d) shall be made in accordance with Treasury Regulation Section 1.409A-3(i)(1)(iv) and shall be paid on or before the last day of Executive's taxable year following the taxable year in which Executive incurred the expenses. The amounts provided under this Section 3(d) during any taxable year of Executive's will not affect such amounts provided in any other taxable year of Executive's, and Executive's right to reimbursement for such amounts shall not be subject to liquidation or exchange for any other benefit.

(e) Paid Time Off. Executive shall be entitled to such periods of paid time off ("PTO") each year as provided from time to time under the Company's PTO policy and as otherwise provided for senior executive officers; provided that Executive shall be entitled to accrue at least four (4) weeks of PTO per year.

(f) Equity Plans. Executive will remain eligible to receive Stock Awards covering the Company's common stock under the equity plans maintained by the Company. Executive shall be entitled to participate in any equity or other employee benefit plan that is generally available to senior executive officers, as distinguished from general management, of the Company. Except as otherwise provided in this Agreement, Executive's participation in and benefits under any such plan shall be on the terms and subject to the conditions specified in the governing document of the particular plan.

(g) Stock Award Acceleration.

(i) The vesting and exercisability of one hundred percent (100%) of Executive's outstanding Stock Awards shall be automatically accelerated in the event of Executive's Involuntary Termination within three (3) months prior to or within twelve (12) months following the date of a Change of Control, which acceleration shall occur on the later of (A) the date of such Involuntary Termination or (B) the date of such Change of Control. In addition, Executive's Stock Awards shall remain exercisable by Executive (or Executive's legal guardian or legal representative) until the later of (A) twelve (12) months following the date of such Separation from Service, (B) with respect to any portion of the Stock Awards that become exercisable on the date of a Change of Control pursuant to this Section 3(g)(i), twelve (12) months after the date of the Change of Control, or (C) such longer period as may be specified in the applicable Stock Award Agreement; provided, however, that in no event shall any Stock Award remain exercisable beyond the original outside expiration date of such Stock Award.

(ii) In the event of Executive's Involuntary Termination or Executive's Separation from Service by reason of Executive's death or discharge by the Company following Executive's Permanent Disability, the vesting and/or exercisability of each of Executive's outstanding Stock Awards shall be automatically accelerated on the date of such Separation from Service as to the number of Stock Awards that would vest over the twelve (12) month period following the date of such Separation from Service had Executive remained continuously employed by the Company during such period. In addition, the event of Executive's Involuntary Termination or Executive's Separation from Service by reason of Executive's death or discharge by the Company following Executive's Permanent Disability, Executive's Stock Awards shall remain exercisable by Executive (or Executive's legal guardian or legal representative) until the later of (A) twelve (12) months following the date of such Separation from Service or (B) such longer period as may be specified in the applicable Stock Award Agreement; provided,however, that in no event shall any Stock Award remain exercisable beyond the original outside expiration date of such Stock Award.

(iii) The vesting pursuant to clauses (i) and (ii) of this Section 3(g) shall be cumulative. The foregoing provisions are hereby deemed to be a part of each Stock Award and to supersede any less favorable provision in any agreement or plan regarding such Stock Award.

4. Separation from Service and Severance. Executive shall be entitled to receive benefits upon Separation from Service only as set forth in this Section 4:

(a) At-Will Employment; Termination. The Company and Executive acknowledge that Executive's employment is and shall continue to be at-will, as defined under applicable law, and that Executive's employment with the Company may be terminated by either party at any time for any or no reason, with or without notice. In the event of Executive's termination of employment for any reason, Executive shall be entitled to receive Executive's fully earned but unpaid base salary, when due, through the date of Executive's termination at the rate then in effect, plus all other amounts to which Executive is entitled under any compensation plan or practice of the Company at the time of Executive's termination. If Executive's employment terminates for any reason, Executive shall not be entitled to any other payments, benefits, damages, awards or compensation other than as provided in this Agreement. Executive's employment under this Agreement shall be terminated immediately on the death of Executive.

(b) Separation from Service by Reason of Death or Discharge Following Permanent Disability. In the event of Executive's Separation from Service as a result of Executive's death or discharge by the Company following Executive's Permanent Disability, subject to Sections 4(e) and 9(o) and Executive's continued compliance with Section 5, Executive or Executive's estate, as applicable, shall be entitled to receive, in addition to the accrued compensation described in Section 4(a) and in lieu of any severance benefits to which Executive or Executive's estate may otherwise be entitled under any severance plan or program of the Company (other than as provided in Section 3(g) of this Agreement), the benefits provided below, subject to Executive's compliance with Section 4(f):

(i) Executive or Executive's estate, as applicable, shall be entitled to receive a lump sum cash payment equal to Executive's annual base salary as in effect immediately prior to the date of Executive's Separation from Service, payable on the day that is sixty (60) days following the date of Executive's Separation from Service (or, in the event of Executive's death, payable on the day that is ten (10) days following the date of Executive's death);

(ii) Executive or Executive's estate, as applicable, shall be entitled to receive a lump sum cash payment equal to Executive's Bonus for the year in which Executive's Separation from Service occurs, prorated for the period of Executive's service during the year in which Executive's Separation from Service occurs, payable on the day that is sixty (60) days following the date of Executive's Separation from Service (or, in the event of Executive's death, payable on the day that is ten (10) days following the date of Executive's death);

(iii) Executive or his estate shall be entitled to receive a lump sum cash payment equal to twelve (12) multiplied by the monthly premium Executive and/or his eligible dependents would be required to pay for continuation coverage pursuant to the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended ("COBRA") for Executive (if applicable) and his eligible dependents who were covered under the Company's health plans as of the date of Executive's Separation from Service (calculated by reference to the premium as of the date of Executive's Separation from Service) (provided that Executive shall be solely responsible for all matters relating to his continuation of coverage pursuant to COBRA, including, without limitation, his election of such coverage and his timely payment of premiums), which payment shall be paid on the day that is sixty (60) days following the date of Executive's Separation from Service (or, in the event of Executive's death, payable on the day that is ten (10) days following the date of Executive's death); and

(v) Executive shall be entitled to receive (other than in the event Executive's Separation from Service was a result of Executive's death) a lump sum cash payment sufficient to pay the premiums for life insurance benefits coverage for the twelve (12) month period commencing on the date of Executive's Separation from Service to the extent Executive and his eligible dependents were receiving such benefits prior to the date of Executive's Separation from Service, which payment shall be paid on the day that is sixty (60) days following the date of Executive's Separation from Service.

(c) Severance Upon Involuntary Termination. In the event of Executive's Involuntarily Termination, subject to Sections 4(e) and 9(o) and Executive's continued compliance with Section 5, Executive shall be entitled to receive, in addition to the accrued compensation described in Section 4(a) and in lieu of any severance benefits to which Executive may otherwise be entitled under any severance plan or program of the Company (other than as provided in Section 3(g) of this Agreement), the benefits provided below, subject to Executive's compliance with Section 4(f):

(i) Executive shall be entitled to receive a lump sum cash payment equal to 100% of Executive's annual base salary as in effect immediately prior to the date of Executive's Involuntary Termination, payable on the day that is sixty (60) days following the date of Executive's Involuntary Termination; provided, however, that if Executive's Involuntary Termination occurs within twenty-four (24) months following a Change of Control, the foregoing reference to 100% shall be increased to 200%;

(ii) if Executive's Involuntary Termination occurs within twenty-four (24) months following a Change of Control, Executive shall be entitled to receive a lump sum cash payment equal to two (2) times Executive's Bonus for the year in which Executive's Involuntary Termination occurs;

(iii) Executive shall be entitled to receive a lump sum cash payment equal to twelve (12) multiplied by the monthly premium Executive and his eligible dependents would be required to pay for continuation coverage pursuant to COBRA for Executive and his eligible dependents who were covered under the Company's health plans as of the date of Executive's Involuntary Termination (calculated by reference to the premium as of the date of Involuntary Termination) (provided that Executive shall be solely responsible for all matters relating to his continuation of coverage pursuant to COBRA, including, without limitation, his election of such coverage and his timely payment of premiums), which payment shall be paid on the day that is sixty (60) days following the date of Executive's Involuntary Termination; provided, however, that if Executive's Involuntary Termination occurs within twenty-four (24) months following a Change of Control, the foregoing reference to twelve (12) months shall be increased to twenty-four (24) months;

(iv) Executive shall be entitled to receive a lump sum cash payment sufficient to pay the premiums for life insurance benefits coverage for the twelve (12) month period commencing on the date of Executive's Involuntary Termination to the extent Executive and his eligible dependents were receiving such benefits prior to the date of Executive's Involuntary Termination, which payment shall be paid on the day that is sixty (60) days following the date of Executive's Involuntary Termination; provided, however, that if Executive's Involuntary Termination occurs within twenty-four (24) months following a Change of Control, the foregoing reference to twelve (12) months shall be increased to twenty-four (24) months; and

(v) Executive shall be entitled to receive a lump sum cash payment of $15,000 for executive-level outplacement services, which payment shall be paid on the day that is sixty (60) days following the date of Executive's Involuntary Termination.

(d) Termination for Cause or Voluntary Resignation Without Good Reason. If Executive's employment is terminated by the Company for Cause or by Executive without Good Reason, the Company shall not have any other or further obligations to Executive under this Agreement (including any financial obligations) except that Executive shall be entitled to receive (i) Executive's fully earned but unpaid base salary, through the date of termination at the rate then in effect, and (ii) all other amounts or benefits to which Executive is entitled under any compensation, retirement or benefit plan or practice of the Company at the time of termination in accordance with the terms of such plans or practices, including, without limitation, any continuation of benefits required by COBRA or applicable law. In addition, if Executive's employment is terminated by the Company for Cause or by Executive without Good Reason, all vesting of Executive's unvested Stock Awards previously granted to him by the Company shall cease and none of such unvested Stock Awards shall be exercisable following the date of such termination. The foregoing shall be in addition to, and not in lieu of, any and all other rights and remedies which may be available to the Company under the circumstances, whether at law or in equity.

(e) Section 409A Compliance. Notwithstanding anything to the contrary in this Section 4, the parties acknowledge and agree that:

(i) In the event Executive is a "specified employee" (as defined in Section 1.409A-1(i) of the Treasury Regulations issued under Section 409A of the Code) as of the date of his Separation from Service, to the extent required by Section 409A of the Code and the Treasury Regulations thereunder, no payment shall be made, or benefit provided, to Executive pursuant to Sections 4(b) and 4(c) as a result of such Separation from Service until the date that is six months after the date of such Separation from Service (or, if earlier than the end of such six-month period, the date of death of Executive), and any payment or benefit so delayed shall be paid in a lump sum on such date. Each series of payments made under this Agreement is hereby designated as a series of "separate payments" within the meaning of Section 409A of the Code.

(ii) As provided in Internal Revenue Service Notice 2007-86, notwithstanding any other provision of this Agreement, with respect to an election or amendment to change a time and form of payment under this Agreement that is subject to Section 409A made on or after January 1, 2008 and on or before December 31, 2008, the election or amendment may apply only to amounts that would not otherwise be payable in 2008 and may not cause an amount to be paid in 2008 that would not otherwise be payable in 2008.

(f) Release. As a condition to Executive's receipt of any post-termination benefits described in this Agreement (other than Section 4(a)), Executive shall execute and not revoke a general release of all claims in favor of the Company (the "Release") in the form attached hereto as Exhibit A. Such Release shall specifically relate to all of Executive's rights and claims in existence at the time of such execution, including any claims related to Executive's employment by the Company and his termination of employment, and shall exclude any continuing obligations the Company may have to Executive following the date of termination under this Agreement or any other agreement providing for obligations to survive Executive's termination of employment. In the event Executive's Release does not become effective within the fifty-five (55) day period following the date of Executive's Separation from Service, Executive shall not be entitled to any payments and benefits described in Section 4, other than those payable under Section 4(a).

(g) Exclusive Remedy. Except as otherwise expressly required by law (e.g., COBRA) or as specifically provided herein, all of Executive's rights to salary, severance, benefits, bonuses and other amounts hereunder (if any) accruing after the termination of Executive's employment shall cease upon such termination. In the event of a termination of Executive's employment with the Company, Executive's sole remedy shall be to receive the payments and benefits described in this Section 4. In addition, Executive acknowledges and agrees that he is not entitled to any reimbursement by the Company for any taxes payable by Executive as a result of the payments and benefits received by Executive pursuant to this Section 4, including, without limitation, any excise tax imposed by Section 4999 of the Code.

(h) Mitigation. The amount of any payment or benefit provided for in this Section 4 shall be reduced by any compensation earned by Executive as the result of employment by another employer or self-employment and, as provided in Sections 4(b) and 4(c), Executive's (or his dependents') right to continued healthcare and life insurance benefits following his termination of employment will terminate on the date on which the applicable continuation period under COBRA expires. In addition, loans, advances or other amounts owed by Executive to the Company may be offset by the Company against amounts payable to Executive under this Section 4. Executive shall use his reasonable best efforts to obtain other employment following the date of termination.

(i) Return of the Company's Property. If Executive's employment is terminated for any reason, the Company shall have the right, at its option, to require Executive to vacate his offices prior to or on the effective date of termination and to cease all activities on the Company's behalf. Upon the termination of his employment in any manner, as a condition to the Executive's receipt of any post-termination benefits described in this Agreement, Executive shall immediately surrender to the Company all lists, books and records of, or in connection with, the Company's business, and all other property belonging to the Company, it being distinctly understood that all such lists, books and records, and other documents, are the property of the Company. Executive shall deliver to the Company a signed statement certifying compliance with this Section 4(i) prior to the receipt of any post-termination benefits described in this Agreement.

(j) Waiver of the Company's Liability. Executive recognizes that his employment is subject to termination with or without Cause for any reason and therefore Executive agrees that Executive shall hold the Company harmless from and against any and all liabilities, losses, damages, costs and expenses, including but not limited to, court costs and reasonable attorneys' fees, which Executive may incur as a result of the termination of Executive's employment. Executive further agrees that Executive shall bring no claim or cause of action against the Company for damages or injunctive relief based on a wrongful termination of employment. Executive agrees that the sole liability of the Company to Executive upon termination of this Agreement shall be that determined by this Section 4. In the event this covenant is more restrictive than permitted by laws of the jurisdiction in which the Company seeks enforcement thereof, this covenant shall be limited to the extent permitted by law.

5. Certain Covenants.

(a) Noncompetition. Except as may otherwise be approved by the Board, during the term of Executive's employment, Executive shall not have any ownership interest (of record or beneficial) in, or have any interest as an employee, salesman, consultant, officer or director in, or otherwise aid or assist in any manner, any firm, corporation, partnership, proprietorship or other business that engages in any county, city or part thereof in the United States and/or any foreign country in a business which competes directly or indirectly (as determined by the Board) with the Company's business in such county, city or part thereof, so long as the Company, or any successor in interest of the Company to the business and goodwill of the Company, remains engaged in such business in such county, city or part thereof or continues to solicit customers or potential customers therein; provided, however, that Executive may own, directly or indirectly, solely as an investment, securities of any entity which are traded on any national securities exchange if Executive (x) is not a controlling person of, or a member of a group which controls, such entity; or (y) does not, directly or indirectly, own one percent (1%) or more of any class of securities of any such entity.

(b) Confidential Information. Executive and the Company have entered into the Company's standard employee proprietary information and inventions agreement (the "Employee Proprietary Information and Inventions Agreement"). Executive agrees to perform each and every obligation of Executive therein contained.

(c) Solicitation of Employees. Executive shall not during the term of Executive's employment and for the applicable severance period for which Executive receives severance benefits following any termination hereof pursuant to Sections 4(b) and 4(c) above (regardless of whether Executive receives such severance benefits in a lump sum payment or over the length of the severance period) (the "Restricted Period"), directly or indirectly, solicit or encourage to leave the employment of the Company or any of its affiliates, any employee of the Company or any of its affiliates.

(d) Solicitation of Consultants. Executive shall not during the term of Executive's employment and for the Restricted Period, directly or indirectly, hire, solicit or encourage to cease work with the Company or any of its affiliates any consultant then under contract with the Company or any of its affiliates within one year of the termination of such consultant's engagement by the Company or any of its affiliates.

(e) Rights and Remedies Upon Breach. If Executive breaches or threatens to commit a breach of any of the provisions of this Section 5 (the "Restrictive Covenants"), the Company shall have the following rights and remedies, each of which rights and remedies shall be independent of the other and severally enforceable, and all of which rights and remedies shall be in addition to, and not in lieu of, any other rights and remedies available to the Company under law or in equity:

(i) Specific Performance. The right and remedy to have the Restrictive Covenants specifically enforced by any court having equity jurisdiction, all without the need to post a bond or any other security or to prove any amount of actual damage or that money damages would not provide an adequate remedy, it being acknowledged and agreed that any such breach or threatened breach will cause irreparable injury to the Company and that money damages will not provide adequate remedy to the Company;

(ii) Accounting and Indemnification. The right and remedy to require Executive (i) to account for and pay over to the Company all compensation, profits, monies, accruals, increments or other benefits derived or received by Executive or any associated party deriving such benefits as a result of any such breach of the Restrictive Covenants; and (ii) to indemnify the Company against any other losses, damages (including special and consequential damages), costs and expenses, including actual attorneys' fees and court costs, which may be incurred by them and which result from or arise out of any such breach or threatened breach of the Restrictive Covenants; and

(iii) Cessation of Payments. The right to cease all severance payments to Executive hereunder.

(f) Severability of Covenants/Blue Pencilling. If any court determines that any of the Restrictive Covenants, or any part thereof, is invalid or unenforceable, the remainder of the Restrictive Covenants shall not thereby be affected and shall be given full effect, without regard to the invalid portions. If any court determines that any of the Restrictive Covenants, or any part thereof, are unenforceable because of the duration of such provision or the area covered thereby, such court shall have the power to reduce the duration or area of such provision and, in its reduced form, such provision shall then be enforceable and shall be enforced. Executive hereby waives any and all right to attack the validity of the Restrictive Covenants on the grounds of the breadth of their geographic scope or the length of their term.

(g) Enforceability in Jurisdictions. The Company and Executive intend to and do hereby confer jurisdiction to enforce the Restrictive Covenants upon the courts of any jurisdiction within the geographical scope of such covenants. If the courts of any one or more of such jurisdictions hold the Restrictive Covenants wholly unenforceable by reason of the breadth of such scope or otherwise, it is the intention of the Company and Executive that such determination not bar or in any way affect the right of the Company to the relief provided above in the courts of any other jurisdiction within the geographical scope of such covenants, as to breaches of such covenants in such other respective jurisdictions, such covenants as they relate to each jurisdiction being, for this purpose, severable into diverse and independent covenants.

(h) Definitions. For purposes of this Section 5, the term "Company" means not only Evoke Pharma, Inc., but also any company, partnership or entity which, directly or indirectly, controls, is controlled by or is under common control with Evoke Pharma, Inc.

(i) Other Protections. Executive acknowledges that the Company has provided him with the following notice of immunity rights in compliance with the requirements of the Defend Trade Secrets Act: (i) Executive shall not be held criminally or civilly liable under any Federal or State trade secret law for the disclosure of confidential information that is made in confidence to a Federal, State, or local government official or to an attorney solely for the purpose of reporting or investigating a suspected violation of law; (ii) Executive shall not be held criminally or civilly liable under any Federal or State trade secret law for the disclosure of confidential information that is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal; and (iii) if Executive files a lawsuit for retaliation by the Company for reporting a suspected violation of law, Executive may disclose the confidential information to his attorney and use the confidential information in the court proceeding, if Executive files any document containing the confidential information under seal, and do not disclose the confidential information, except pursuant to court order. In addition, nothing in this Agreement or the Employee Proprietary Information and Inventions Agreement shall prevent Executive from (x) communicating directly with, cooperating with, or providing information to, or receiving financial awards from, any federal, state or local government agency, including without limitation the U.S. Securities and Exchange Commission, the U.S. Commodity Futures Trading Commission, the U.S. Department of Justice, the U.S. Equal Employment Opportunity Commission, or the U.S. National Labor Relations Board, without notifying or seeking permission from the Company, (y) exercising any rights Executive may have under Section 7 of the U.S. National Labor Relations Act, such as the right to engage in concerted activity, including collective action or discussion concerning wages or working conditions, or (z) discussing or disclosing information about unlawful acts in the workplace, such as harassment or discrimination based on a protected characteristic or any other conduct that Executive has reason to believe is unlawful.

6. Insurance. The Company shall have the right to take out life, health, accident, "key-man" or other insurance covering Executive, in the name of the Company and at the Company's expense in any amount deemed appropriate by the Company. Executive shall assist the Company in obtaining such insurance, including, without limitation, submitting to any required examinations and providing information and data required by insurance companies.

7. Arbitration. Any dispute, claim or controversy based on, arising out of or relating to Executive's employment or this Agreement shall be settled by final and binding arbitration in San Diego, California, before a single neutral arbitrator in accordance with the National Rules for the Resolution of Employment Disputes (the "Rules") of the American Arbitration Association, and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction. The Rules may be found online at www.adr.org or are available upon request to the Company. Arbitration may be compelled pursuant to the California Arbitration Act (Code of Civil Procedure §§ 1280 et seq.). If the parties are unable to agree upon an arbitrator, one shall be appointed by the AAA in accordance with its Rules. Each party shall pay the fees of its own attorneys, the expenses of its witnesses and all other expenses connected with presenting its case; however, Executive and the Company agree that, to the extent permitted by law, the arbitrator may, in his discretion, award reasonable attorneys' fees to the prevailing party; provided, further, that the prevailing party shall be reimbursed for such fees, costs and expenses within forty-five (45) days following any such award, but in no event later than the last day of the Executive's taxable year following the taxable year in which the fees, costs and expenses were incurred; provided, further, that the parties' obligations pursuant to this sentence shall terminate on the tenth (10th) anniversary of the date of Executive's termination of employment. Other costs of the arbitration, including the cost of any record or transcripts of the arbitration, AAA's administrative fees, the fee of the arbitrator, and all other fees and costs, shall be borne by the Company. This Section 7 is intended to be the exclusive method for resolving any and all claims by the parties against each other for payment of damages under this Agreement or relating to Executive's employment; provided, however, that Executive shall retain the right to file administrative charges with or seek relief through any government agency of competent jurisdiction, and to participate in any government investigation, including but not limited to (i) claims for workers' compensation, state disability insurance or unemployment insurance; (ii) claims for unpaid wages or waiting time penalties brought before the California Division of Labor Standards Enforcement; provided, however, that any appeal from an award or from denial of an award of wages and/or waiting time penalties shall be arbitrated pursuant to the terms of this Agreement; and (iii) claims for administrative relief from the United States Equal Employment Opportunity Commission and/or the California Department of Fair Employment and Housing (or any similar agency in any applicable jurisdiction other than California); provided, further, that Executive shall not be entitled to obtain any monetary relief through such agencies other than workers' compensation benefits or unemployment insurance benefits. This Agreement shall not limit either party's right to obtain any provisional remedy, including, without limitation, injunctive or similar relief, from any court of competent jurisdiction as may be necessary to protect their rights and interests pending the outcome of arbitration, including without limitation injunctive relief, in any court of competent jurisdiction pursuant to California Code of Civil Procedure § 1281.8 or any similar statute of an applicable jurisdiction. Seeking any such relief shall not be deemed to be a waiver of such party's right to compel arbitration. Both Executive and the Company expressly waive their right to a jury trial.

8. General Relationship. Executive shall be considered an employee of the Company within the meaning of all federal, state and local laws and regulations including, but not limited to, laws and regulations governing unemployment insurance, workers' compensation, industrial accident, labor and taxes.

9. Miscellaneous.

(a) Modification; Prior Claims. This Agreement, together with the Employee Proprietary Information and Inventions Agreement, set forth the entire understanding of the parties with respect to the subject matter hereof, supersedes all existing agreements, including the Original Agreement, between them concerning such subject matter, and may be modified only by a written instrument duly executed by each party.

(b) Assignment; Assumption by Successor. The rights of the Company under this Agreement may, without the consent of Executive, be assigned by the Company, in its sole and unfettered discretion, to any person, firm, corporation or other business entity which at any time, whether by purchase, merger or otherwise, directly or indirectly, acquires all or substantially all of the assets or business of the Company. The Company will require any successor (whether direct or indirect, by purchase, merger or otherwise) to all or substantially all of the business or assets of the Company expressly to assume and to agree to perform this Agreement in the same manner and to the same extent that the Company would be required to perform it if no such succession had taken place; provided, however, that no such assumption shall relieve the Company of its obligations hereunder. As used in this Agreement, the "Company" shall mean the Company as hereinbefore defined and any successor to its business and/or assets as aforesaid which assumes and agrees to perform this Agreement by operation of law or otherwise.

(c) Survival. The covenants, agreements, representations and warranties contained in or made in Sections 3(g), 4, 5, 7 and 9 of this Agreement shall survive any termination of Executive's employment.

(d) Third-Party Beneficiaries. This Agreement does not create, and shall not be construed as creating, any rights enforceable by any person not a party to this Agreement.

(e) Waiver. The failure of either party hereto at any time to enforce performance by the other party of any provision of this Agreement shall in no way affect such party's rights thereafter to enforce the same, nor shall the waiver by either party of any breach of any provision hereof be deemed to be a waiver by such party of any other breach of the same or any other provision hereof.

(f) Section Headings. The headings of the several sections in this Agreement are inserted solely for the convenience of the parties and are not a part of and are not intended to govern, limit or aid in the construction of any term or provision hereof.

(g) Notices. All notices, requests and other communications hereunder shall be in writing and shall be delivered by courier or other means of personal service (including by means of a nationally recognized courier service or professional messenger service), or sent by telex or telecopy or mailed first class, postage prepaid, by certified mail, return receipt requested. Novice shall be sent to Executive at the address listed on the Company's personnel records and to the Company at its principal place of business, or such other address as either party may specify in writing.

All notices, requests and other communications shall be deemed given on the date of actual receipt or delivery as evidenced by written receipt, acknowledgement or other evidence of actual receipt or delivery to the address. In case of service by telecopy, a copy of such notice shall be personally delivered or sent by registered or certified mail, in the manner set forth above, within three business days thereafter. Any party hereto may from time to time by notice in writing served as set forth above designate a different address or a different or additional person to which all such notices or communications thereafter are to be given.

(h) Severability. All Sections, clauses and covenants contained in this Agreement are severable, and in the event any of them shall be held to be invalid by any court, this Agreement shall be interpreted as if such invalid Sections, clauses or covenants were not contained herein.

(i) Governing Law and Venue. This Agreement is to be governed by and construed in accordance with the laws of the State of California applicable to contracts made and to be performed wholly within such State, and without regard to the conflicts of laws principles thereof. Except as provided in Sections 5 and 7, any suit brought hereon shall be brought in the state or federal courts sitting in San Diego, California, the parties hereto hereby waiving any claim or defense that such forum is not convenient or proper. Each party hereby agrees that any such court shall have in personam jurisdiction over it and consents to service of process in any manner authorized by California law.

(j) Non-transferability of Interest. None of the rights of Executive to receive any form of compensation payable pursuant to this Agreement shall be assignable or transferable except through a testamentary disposition or by the laws of descent and distribution upon the death of Executive. Any attempted assignment, transfer, conveyance, or other disposition (other than as aforesaid) of any interest in the rights of Executive to receive any form of compensation to be made by the Company pursuant to this Agreement shall be void.

(k) Gender. Where the context so requires, the use of the masculine gender shall include the feminine and/or neuter genders and the singular shall include the plural, and vice versa, and the word "person" shall include any corporation, firm, partnership or other form of association.

(l) Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement.

(m) Construction. The language in all parts of this Agreement shall in all cases be construed simply, according to its fair meaning, and not strictly for or against any of the parties hereto. Without limitation, there shall be no presumption against any party on the ground that such party was responsible for drafting this Agreement or any part thereof.

(n) Withholding and other Deductions. All compensation payable to Executive hereunder shall be subject to such deductions as the Company is from time to time required to make pursuant to law, governmental regulation or order.

(o) Code Section 409A. This Agreement shall be interpreted, construed and administered in a manner that satisfies the requirements of Sections 409A of the Code. Notwithstanding any provision of this Agreement to the contrary, if Executive and the Company determine that any payments or benefits payable under this Agreement intended to comply with Sections 409A(a)(2), (3) and (4) of the Code do not comply with Section 409A of the Code, Executive and the Company agree to amend this Agreement, or take such other actions as Executive and the Company deem reasonably necessary or appropriate, to comply with the requirements of Section 409A of the Code and the Treasury Regulations thereunder (and any applicable transition relief) while preserving the economic agreement of the parties. If any provision of this Agreement would cause such payments or benefits to fail to so comply, such provision shall not be effective and shall be null and void with respect to such payments or benefits, and such provision shall otherwise remain in full force and effect. To the extent that provision of this Agreement is ambiguous as to its compliance with Section 409A of the Code, the provision shall be read in such a manner that no payments payable under this Agreement shall be subject to an "additional tax" as defined in Section 409A(a)(1)(B) of the Code.

(Signature Page Follows)

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first set forth above.

EVOKE PHARMA, INC.

By: /s/ Mark Kowieski
Name: Mark Kowieski
Title: Chief Financial Officer

/s/ Matthew J. D'Onofrio
Matthew J. D'Onofrio

EXHIBIT A

GENERAL RELEASE OF CLAIMS

[*The language in this Release may change based on legal developments and evolving best practices; this form is provided as an example of what will be included in the final Release document.*]

This General Release of Claims ("***Release***") is entered into as of this _____ day of _____, ____, between Matthew D'Onofrio ("***Executive***"), and Evoke Pharma, Inc., a Delaware corporation (the "***Company***") (collectively referred to herein as the "***Parties***").

WHEREAS, Executive and the Company are parties to that certain Second Amended and Restated Employment Agreement dated as of August 8, 2024 (the "***Agreement***");

WHEREAS, the Parties agree that Executive is entitled to certain severance benefits under the Agreement, subject to Executive's execution of this Release; and

WHEREAS, the Company and Executive now wish to fully and finally to resolve all matters between them.

NOW, THEREFORE, in consideration of, and subject to, the severance benefits payable to Executive pursuant to the Agreement, the adequacy of which is hereby acknowledged by Executive, and which Executive acknowledges that he would not otherwise be entitled to receive, Executive and the Company hereby agree as follows:

1. General Release of Claims by Executive.

(a) Executive, on behalf of himself and his executors, heirs, administrators, representatives and assigns, hereby agrees to release and forever discharge the Company and all predecessors, successors and their respective parent corporations, affiliates, related, and/or subsidiary entities, and all of their past and present investors, directors, shareholders, officers, general or limited partners, employees, attorneys, agents and representatives, and the employee benefit plans in which Executive is or has been a participant by virtue of his employment with or service to the Company (collectively, the "***Company Releasees***"), from any and all claims, debts, demands, accounts, judgments, rights, causes of action, equitable relief, damages, costs, charges, complaints, obligations, promises, agreements, controversies, suits, expenses, compensation, responsibility and liability of every kind and character whatsoever (including attorneys' fees and costs), whether in law or equity, known or unknown, asserted or unasserted, suspected or unsuspected (collectively, "***Claims***"), which Executive has or may have had against such entities based on any events or circumstances arising or occurring on or prior to the date hereof or on or prior to the date hereof, arising directly or indirectly out of, relating to, or in any other way involving in any manner whatsoever Executive's employment by or service to the Company or the termination thereof, including any and all claims arising under federal, state, or local laws relating to employment, including without limitation claims of wrongful discharge, breach of express or implied contract, fraud, misrepresentation, defamation, or liability in tort, and claims of any kind that may be brought in any court or administrative agency including, without limitation, claims under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. Section 2000, et seq.; the Americans with Disabilities Act, as amended, 42 U.S.C. § 12101 et seq.; the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 701 et seq.; the Civil Rights Act of 1866, and the Civil Rights Act of 1991; 42 U.S.C. Section 1981, et seq.; the Age Discrimination in Employment Act, as amended, 29 U.S.C. Section 621, et seq. (the "***ADEA***"); the Equal Pay Act, as amended, 29 U.S.C. Section 206(d); regulations of the Office of Federal Contract Compliance, 41 C.F.R. Section 60, et seq.; the Family and Medical Leave Act, as amended, 29 U.S.C. § 2601 et seq.; the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. § 201 et seq.; the Employee Retirement Income Security Act, as amended, 29 U.S.C. § 1001 et seq.; and the California Fair Employment and Housing Act, California Government Code Section 12940, et seq.

Notwithstanding the generality of the foregoing, Executive does not release the following claims:

(i) Claims for unemployment compensation or any state disability insurance benefits pursuant to the terms of applicable state law;

(ii) Claims for workers' compensation insurance benefits under the terms of any worker's compensation insurance policy or fund of the Company;

(iii) Claims pursuant to the terms and conditions of the federal law known as COBRA;

(iv) Claims for indemnity under the bylaws of the Company, as provided for by California law or under any applicable insurance policy with respect to Executive's liability as an employee, director or officer of the Company;

(v) Claims based on any right Executive may have to enforce the Company's executory obligations under the Agreement; and

(vi) Claims Executive may have to vested or earned compensation and benefits.

(b) EXECUTIVE ACKNOWLEDGES THAT HE OR SHE HAS BEEN ADVISED OF AND IS FAMILIAR WITH THE PROVISIONS OF CALIFORNIA CIVIL CODE SECTION 1542, WHICH PROVIDES AS FOLLOWS:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH, IF KNOWN BY HIM OR HER, MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR."

BEING AWARE OF SAID CODE SECTION, EXECUTIVE HEREBY EXPRESSLY WAIVES ANY RIGHTS HE OR SHE MAY HAVE THEREUNDER, AS WELL AS UNDER ANY OTHER STATUTES OR COMMON LAW PRINCIPLES OF SIMILAR EFFECT.

(c) Executive acknowledges that this Release was presented to him or her on the date indicated above and that Executive is entitled to have [twenty-one (21)][forty-five (45)] days' time in which to consider it. Executive further acknowledges that the Company has advised him or her that he or she is waiving his or her rights under the ADEA, and that Executive should consult with an attorney of his or her choice before signing this Release, and Executive has had sufficient time to consider the terms of this Release. Executive represents and acknowledges that if Executive executes this Release before [twenty-one (21)][forty-five (45)] days have elapsed, Executive does so knowingly, voluntarily, and upon the advice and with the approval of Executive's legal counsel (if any), and that Executive voluntarily waives any remaining consideration period.

(d) Executive understands that after executing this Release, Executive has the right to revoke it within seven (7) days after his or her execution of it. Executive understands that this Release will not become effective and enforceable unless the seven (7) day revocation period passes and Executive does not revoke the Release in writing. Executive understands that this Release may not be revoked after the seven (7) day revocation period has passed. Executive also understands that any revocation of this Release must be made in writing and delivered to the Company at its principal place of business within the seven (7) day period.

(e) Executive understands that this Release shall become effective, irrevocable, and binding upon Executive on the eighth (8th) day after his or her execution of it, so long as Executive has not revoked it within the time period and in the manner specified in clause (d) above.

(f) Executive further understands that Executive will not be given any severance benefits under the Agreement unless this Release is effective on or before the date that is fifty-five (55) days following the date of Executive's termination of employment.

2. No Assignment. Executive represents and warrants to the Company Releasees that there has been no assignment or other transfer of any interest in any Claim that Executive may have against the Company Releasees. Executive agrees to indemnify and hold harmless the Company Releasees from any liability, claims, demands, damages, costs, expenses and attorneys' fees incurred as a result of any such assignment or transfer from Executive.

3. Severability. In the event any provision of this Release is found to be unenforceable by an arbitrator or court of competent jurisdiction, such provision shall be deemed modified to the extent necessary to allow enforceability of the provision as so limited, it being intended that the parties shall receive the benefit contemplated herein to the fullest extent permitted by law. If a deemed modification is not satisfactory in the judgment of such arbitrator or court, the unenforceable provision shall be deemed deleted, and the validity and enforceability of the remaining provisions shall not be affected thereby.

4. Interpretation; Construction. The headings set forth in this Release are for convenience only and shall not be used in interpreting this Agreement. This Release has been drafted by legal counsel representing the Company, but Executive has participated in the negotiation of its terms. Furthermore, Executive acknowledges that Executive has had an opportunity to review and revise the Release and have it reviewed by legal counsel, if desired, and, therefore, the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Release. Either party's failure to enforce any provision of this Release shall not in any way be construed as a waiver of any such provision, or prevent that party thereafter from enforcing each and every other provision of this Release.

5. Governing Law and Venue. This Release will be governed by and construed in accordance with the laws of the United States of America and the State of California applicable to contracts made and to be performed wholly within such State, and without regard to the conflicts of laws principles thereof. Any suit brought hereon shall be brought in the state or federal courts sitting in San Diego County, California, the Parties hereby waiving any claim or defense that such forum is not convenient or proper. Each party hereby agrees that any such court shall have in personam jurisdiction over it and consents to service of process in any manner authorized by California law.

6. Entire Agreement. This Release and the Agreement constitute the entire agreement of the Parties in respect of the subject matter contained herein and therein and supersede all prior or simultaneous representations, discussions, negotiations and

agreements, whether written or oral. This Release may be amended or modified only with the written consent of Executive and an authorized representative of the Company. No oral waiver, amendment or modification will be effective under any circumstances whatsoever.

7. Counterparts. This Release may be executed in multiple counterparts, each of which shall be deemed to be an original but all of which together shall constitute one and the same instrument.

(Signature Page Follows)

IN WITNESS WHEREOF, and intending to be legally bound, the Parties have executed the foregoing Release as of the date first written above.

EXECUTIVE

/s/ Matthew J. D'Onofrio

Print Name: Matthew J. D'Onofrio

EVOKE PHARMA, INC.

By: /s/ Mark Kowieski

Print Name: Mark Kowieski

Title: Chief Financial Officer

Exhibit 10.2

AMENDED AND RESTATED EMPLOYMENT AGREEMENT

THIS AMENDED AND RESTATED EMPLOYMENT AGREEMENT (this "Agreement") is entered into by and between Evoke Pharma, Inc., a Delaware corporation (the "Company"), and Mark Kowieski ("Executive"), and shall be effective as of August 8, 2024 (the "Effective Date").

WHEREAS, the Company and Executive desire to amend and restate that certain Employment Agreement, dated as of June 13, 2022, by and between the Company and Executive (the "Prior Agreement") on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual promises herein contained, the parties agree as follows:

1. Definitions. As used in this Agreement, the following terms shall have the following meanings:

(a) Board. "Board" means the Board of Directors of the Company.

(b) Bonus. "Bonus" means an amount equal to the greater of (i) Executive's target annual bonus for the fiscal year in which the date of termination occurs, or (ii) the bonus awarded to Executive for the fiscal year prior to the date of termination (which bonus shall be annualized to the extent Executive was not employed for the entire fiscal year prior to the date of termination). If any portion of the bonuses awarded to Executive consisted of securities or other property, the fair market value thereof shall be determined in good faith by the Board.

(c) Cause. "Cause" means any of the following:

(i) the commission of an act of fraud, embezzlement or dishonesty by Executive that has a material adverse impact on the Company or any successor or affiliate thereof;

(ii) a conviction of, or plea of "guilty" or "no contest" to, a felony by Executive;

(iii) any unauthorized use or disclosure by Executive of confidential information or trade secrets of the Company or any successor or affiliate thereof that has a material adverse impact on any such entity;

(iv) Executive's gross negligence, insubordination or material violation of any duty of loyalty to the Company or any other material misconduct on the part of Executive;

(v) Executive's ongoing and repeated failure or refusal to perform or neglect of Executive's duties as required by this Agreement, which failure, refusal or neglect continues for fifteen (15) days following Executive's receipt of written notice from the Board or the Company's Chief Executive Officer (the "CEO") stating with specificity the nature of such failure, refusal or neglect; or

(vi) Executive's breach of any material provision of this Agreement;

provided, however, that prior to the determination that "Cause" under this Section 1(c) has occurred (other than clauses (ii) and (v)), the Company shall (w) provide to Executive in writing, in reasonable detail, the reasons for the determination that such "Cause" exists, (x) other than with respect to clause (v) above which specifies the applicable period of time for Executive to remedy his breach, afford Executive a reasonable opportunity to remedy any such breach, (y) provide the Executive an opportunity to be heard prior to the final decision to terminate the Executive's employment hereunder for such "Cause" and (z) make any decision that such "Cause" exists in good faith.

The foregoing definition shall not in any way preclude or restrict the right of the Company or any successor or affiliate thereof to discharge or dismiss Executive for any other acts or omissions, but such other acts or omissions shall not be deemed, for purposes of this Agreement, to constitute grounds for termination for Cause.

(d) Change of Control. "Change of Control" means and includes each of the following:

(i) the acquisition, directly or indirectly, by any "person" or "group" (as those terms are defined in Sections 3(a)(9), 13(d), and 14(d) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and the rules thereunder) of "beneficial ownership" (as determined pursuant to Rule 13d-3 under the Exchange Act) of securities entitled to vote generally in the

election of directors ("voting securities") of the Company that represent fifty percent (50%) or more of the combined voting power of the Company's then outstanding voting securities, other than:

(1) an acquisition by a trustee or other fiduciary holding securities under any employee benefit plan (or related trust) sponsored or maintained by the Company or any person controlled by the Company or by any employee benefit plan (or related trust) sponsored or maintained by the Company or any person controlled by the Company, or

(2) an acquisition of voting securities by the Company or a corporation owned, directly or indirectly, by the stockholders of the Company in substantially the same proportions as their ownership of the stock of the Company, or

(3) an acquisition of voting securities pursuant to a transaction described in Section 1(d)(ii) below that would not be a Change of Control under Section 1(d)(ii);

Notwithstanding the foregoing, the following event shall not constitute an "acquisition" by any person or group for purposes of this Section 1(d): an acquisition of the Company's securities by the Company which causes the Company's voting securities beneficially owned by a person or group to represent fifty percent (50%) or more of the combined voting power of the Company's then outstanding voting securities; provided,however, that if a person or group shall become the beneficial owner of fifty percent (50%) or more of the combined voting power of the Company's then outstanding voting securities by reason of share acquisitions by the Company as described above and shall, after such share acquisitions by the Company, become the beneficial owner of any additional voting securities of the Company, then such acquisition shall constitute a Change of Control; or

(ii) the consummation by the Company (whether directly involving the Company or indirectly involving the Company through one or more intermediaries) of a merger, consolidation, reorganization, or business combination, a sale or other disposition of all or substantially all of the Company's assets, or the acquisition of assets or stock of another entity, in each case, other than a transaction:

(1) which results in the Company's voting securities outstanding immediately before the transaction continuing to represent (either by remaining outstanding or by being converted into voting securities of the Company or the person that, as a result of the transaction, controls, directly or indirectly, the Company or owns, directly or indirectly, all or substantially all of the Company's assets or otherwise succeeds to the business of the Company (the Company or such person, the "Successor Entity")) directly or indirectly, at least 50% of the combined voting power of the Successor Entity's outstanding voting securities immediately after the transaction, and

(2) after which no person or group beneficially owns voting securities representing fifty percent (50%) or more of the combined voting power of the Successor Entity; provided, however, that no person or group shall be treated for purposes of this subsection (d)(ii) as beneficially owning fifty percent (50%) or more of combined voting power of the Successor Entity solely as a result of the voting power held in the Company prior to the consummation of the transaction; or

(iii) the Company's stockholders approve a liquidation or dissolution of the Company.

Notwithstanding the foregoing, a transaction shall not constitute a "Change of Control" if: (i) its sole purpose is to change the state of the Company's incorporation; (ii) its sole purpose is to create a holding company that will be owned in substantially the same proportions by the persons who held the Company's securities immediately before such transaction; or (iii) it is a transaction effected primarily for the purpose of financing the Company with cash (as determined by the Board in its discretion and without regard to whether such transaction is effectuated by a merger, equity financing or otherwise). The Board shall have full and final authority, which shall be exercised in its sole discretion, to determine conclusively whether a Change of Control of the Company has occurred pursuant to the above definition, and the date of the occurrence of such Change of Control and any incidental matters relating thereto.

(e) Code. "Code" means the Internal Revenue Code of 1986, as amended from time to time, and the Treasury Regulations and other interpretive guidance issued thereunder.

(f) Good Reason. "Good Reason" means the occurrence of any of the following events or conditions without Executive's written consent:

(i) a material diminution in Executive's authority, duties or responsibilities;

(ii) a material diminution in Executive's base compensation, except in connection with a general reduction in the compensation of the Company's or any successor's or affiliate's personnel with similar status and responsibilities;

(iii) the Company's or any successor's or affiliate's requiring Executive (without Executive's consent) to be based at any place outside a 50-mile radius of his place of employment as of the Effective Date, except for reasonably required travel on the Company's or any successor's or affiliate's business that is not materially greater than such travel requirements prior to the Effective Date; or

(iv) any material breach by the Company or any successor or affiliate of its obligations to Executive under this Agreement.

Executive must provide written notice to the Company of the occurrence of any of the foregoing events or conditions without Executive's written consent within ninety (90) days of the occurrence of such event. The Company or any successor or affiliate shall have a period of thirty (30) days to cure such event or condition after receipt of written notice of such event from Executive. Any voluntary Separation from Service for "Good Reason" following such thirty (30) day cure period must occur no later than the date that is six (6) months following the initial occurrence of one of the foregoing events or conditions without Executive's written consent. Executive's voluntary Separation from Service by reason of resignation from employment with the Company for Good Reason shall be treated as involuntary.

(g) Involuntary Termination. "Involuntary Termination" means (i) the Executive's Separation from Service by reason of Executive's discharge by the Company other than for Cause, or (ii) the Executive's Separation from Service by reason of Executive's resignation of employment with the Company for Good Reason. Executive's Separation from Service by reason of Executive's death or discharge by the Company following Executive's Permanent Disability shall not constitute an Involuntary Termination.

(h) Permanent Disability. Executive's "Permanent Disability" shall be deemed to have occurred if Executive shall become physically or mentally incapacitated or disabled or otherwise unable fully to discharge his duties hereunder for a period of ninety (90) consecutive calendar days or for one hundred twenty (120) calendar days in any one hundred eighty (180) calendar-day period. The existence of Executive's Permanent Disability shall be determined by the Company on the advice of a physician chosen by the Company and the Company reserves the right to have the Executive examined by a physician chosen by the Company at the Company's expense.

(i) Separation from Service. Executive's Separation from Service means his "separation from service," within the meaning of Section 409A(a)(2)(A)(i) of the Code and Treasury Regulation Section 1.409A-1(h) thereunder.

(j) Stock Awards. "Stock Awards" means all stock options, restricted stock and such other awards granted pursuant to the Company's stock option and equity incentive award plans or agreements and any shares of stock issued upon exercise thereof.

2. Services to Be Rendered.

(a) Duties and Responsibilities. Executive shall continue to serve as Chief Financial Officer of the Company. In the performance of such duties, Executive shall report directly to the Chief Executive Officer (CEO) and shall be subject to the direction of the CEO and to such limits upon Executive's authority as the CEO may from time to time impose. In the event of the CEO's incapacity or unavailability, Executive shall be subject to the direction of the Board or its designee. Executive hereby consents to serve as an officer and/or director of the Company or any subsidiary or affiliate thereof without any additional salary or compensation, if so requested by the CEO. Executive shall be employed by the Company on a full time basis. Executive's primary place of work shall be the Company's facility in San Diego, California, or such other location within San Diego County as may be designated by the CEO from time to time. Executive shall also render services at such other places within or outside the United States as the CEO may direct from time to time. Executive shall be subject to and comply with the policies and procedures generally applicable to senior executives of the Company to the extent the same are not inconsistent with any term of this Agreement.

(b) Exclusive Services. Executive shall at all times faithfully, industriously and to the best of his ability, experience and talent perform to the satisfaction of the Board and the CEO all of the duties that may be assigned to Executive hereunder and shall devote substantially all of his productive time and efforts to the performance of such duties. Subject to the terms of the Employee Proprietary Information and Inventions Agreement referred to in Section 5(b), this shall not preclude Executive from devoting time to personal and family investments or serving on community and civic boards, or participating in industry associations, provided such activities do not interfere with his duties to the Company, as determined in good faith by the CEO. Executive agrees that he will not join any boards, other than community and civic boards (which do not interfere with his duties to the Company), without the prior approval of the CEO.

3. Compensation and Benefits. The Company shall pay or provide, as the case may be, to Executive the compensation and other benefits and rights set forth in this Section 3.

a. Base Salary. The Company shall pay to Executive a base salary of $390,000 per year, payable in accordance with the Company's usual pay practices (and in any event no less frequently than monthly). Executive's base salary shall be subject to review annually by and at the sole discretion of the Compensation Committee of the Board or its designee.

b. Bonus. In addition to the base salary, Executive shall be eligible to earn, for each fiscal year of the Company ending during the term of Executive's employment with the Company an annual cash performance bonus (an "Annual Bonus") under the Company's bonus plan or plans applicable to senior executives. For each year during the term of this Agreement, Executive's target Annual Bonus shall be 40% of his base salary actually paid for such year. Executive's actual Annual Bonus shall be determined on the basis of Executive's and/or the Company's attainment of financial or other performance criteria established by the Board, or the Compensation Committee thereof, in accordance with the terms and conditions of such bonus plan(s). Except as otherwise provided in Section 4(b), Executive must be employed by the Company on the date of payment of such Annual Bonus in order to be eligible to receive such Annual Bonus.

c. Benefits. Executive shall be entitled to participate in benefits under the Company's benefit plans and arrangements, including, without limitation, any employee benefit plan or arrangement made available in the future by the Company to its senior executives, subject to and on a basis consistent with the terms, conditions and overall administration of such plans and arrangements. The Company shall have the right to amend or delete any such benefit plan or arrangement made available by the Company to its senior executives and not otherwise specifically provided for herein.

d. Expenses. The Company shall reimburse Executive for reasonable out-of-pocket business expenses incurred in connection with the performance of his duties hereunder, subject to (i) such policies as the Company may from time to time establish, and (ii) Executive furnishing the Company with evidence in the form of receipts satisfactory to the Company substantiating the claimed expenditures, (iii) Executive receiving advance approval from the CEO in the case of expenses for travel outside of North America, and (iv) Executive receiving advance approval from the CEO in the case of expenses (or a series of related expenses) in excess of $10,000.

e. Paid Time Off. Executive shall be entitled to such periods of paid time off ("PTO") each year as provided from time to time under the Company's PTO policy and as otherwise provided for senior executive officers; provided that Executive shall be entitled to accrue at least four (4) weeks of PTO per year.

f. Equity Plans. Executive shall be entitled to participate in any equity or other employee benefit plan that is generally available to senior executive officers, as distinguished from general management, of the Company. Except as otherwise provided in this Agreement, Executive's participation in and benefits under any such plan shall be on the terms and subject to the conditions specified in the governing document of the particular plan.

4. Separation from Service and Severance. Executive shall be entitled to receive benefits upon Separation from Service only as set forth in this Section 4:

(a) At-Will Employment; Termination. The Company and Executive acknowledge that Executive's employment is and shall continue to be at-will, as defined under applicable law, and that Executive's employment with the Company may be terminated by either party at any time for any or no reason, with or without notice. In the event of Executive's termination of employment for any reason, Executive shall be entitled to receive Executive's fully earned but unpaid base salary, when due, through the date of Executive's termination at the rate then in effect, plus all other amounts to which Executive is entitled under any compensation plan or practice of the Company at the time of Executive's termination (the "Accrued Obligations"). If Executive's employment terminates for any reason, Executive shall not be entitled to any other payments, benefits, damages, awards or compensation other than as provided in this Agreement. Executive's employment under this Agreement shall be terminated immediately on the death of Executive.

(b) Severance Upon Involuntary Termination. In the event of Executive's Involuntarily Termination, subject to Sections 4(d) and 9(o) and Executive's continued compliance with Section 5, Executive shall be entitled to receive, in addition to the accrued compensation described in Section 4(a) and in lieu of any severance benefits to which Executive may otherwise be entitled under any severance plan or program of the Company, the benefits provided below:

(i) Executive shall be entitled to receive a lump sum cash payment equal to Executive's monthly base salary as in effect immediately prior to the date of Executive's Involuntary Termination for a period of nine (9) months following the date of Executive's Involuntary Termination, payable within ten (10) days following the date on which Executive's Release (as defined below) becomes effective and irrevocable in accordance with Section 4(d) below; provided, however, that if Executive's Involuntary Termination occurs within twenty-four (24) months following a Change of Control, the foregoing reference to nine (9) months shall be increased to twenty-four (24) months;

(ii) if Executive's Involuntary Termination occurs within twenty-four (24) months following a Change of Control, Executive shall be entitled to receive a lump sum cash payment equal to two (2) times Executive's Bonus for the year in which Executive's Involuntary Termination occurs, payable within ten (10) days following the date on which Executive's Release

becomes effective and irrevocable in accordance with Section 4(d) below;

(iii) for the period beginning on the date of Executive's Separation from Service and ending on the date which is nine (9) full months following the date of Executive's Separation from Service (or, if earlier, (A) the date on which the applicable continuation period under the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended ("COBRA") expires or (B) the date Executive becomes eligible to receive equivalent or increased health insurance benefits from a subsequent employer) (the "COBRA Coverage Period"), the Company shall arrange to provide Executive and his eligible dependents who were covered under the Company's health insurance plans as of the date of Executive's Separation from Service with health (including medical and dental) insurance benefits substantially similar to those provided to Executive and his dependents immediately prior to the date of such Separation from Service; provided, however, that if Executive's Involuntary Termination occurs within twenty-four (24) months following a Change of Control, the foregoing reference to nine (9) months shall be increased to twenty-four (24) months. If the Company is not reasonably able to continue health insurance benefits under the Company's insurance plans, the Company shall provide substantially equivalent coverage under other third-party insurance sources. If any of the Company's health benefits are self-funded as of the date of Executive's Separation from Service, or if the Company cannot provide the foregoing benefits in a manner that exempt from or otherwise compliant with applicable law (including, without limitation, Section 409A of the Code and Section 2716 of the Public Health Service Act), instead of providing continued health insurance benefits as set forth above, the Company shall instead pay to Executive an amount equal to the monthly plan premium payment for Executive and his eligible dependents who were covered under the Company's health plans as of the date of Executive's Separation from Service (calculated by reference to Executive's premiums as of the date of his Separation from Service) as currently taxable compensation in substantially equal monthly installments over the COBRA Coverage Period (or the remaining portion thereof); and

(iv) subject to Sections 4(d) and 9(o) and Executive's continued compliance with Section 5, and solely to the extent Executive's Involuntary Termination occurs within three (3) months prior to or within twelve (12) months following the date of a Change of Control**,** (A) the vesting and exercisability of one hundred percent (100%) of Executive's outstanding Stock Awards shall be automatically accelerated, which acceleration shall occur on the later of (1) the date of such Involuntary Termination or (2) the date of such Change of Control, and (B) Executive's vested Stock Awards shall remain exercisable by Executive (or Executive's legal guardian or legal representative) until the later of (1) twelve (12) months following the date of such Involuntary Termination, (B) with respect to any portion of the Stock Awards that become exercisable on the date of a Change of Control pursuant to this Section 4(b)(iv), twelve (12) months after the date of the Change of Control, or (C) such longer period as may be specified in the applicable Stock Award Agreement; provided, however, that in no event shall any Stock Award remain exercisable beyond the original outside expiration date of such Stock Award. The foregoing provisions are hereby deemed to be a part of each Stock Award and to supersede any less favorable provision in any agreement or plan regarding such Stock Award.

(c) Termination for Cause, Voluntary Resignation Without Good Reason, Death or Permanent Disability. If Executive's employment is terminated by the Company for Cause or by Executive without Good Reason, or as a result of Executive's death or discharge by the Company following Executive's Permanent Disability, the Company shall not have any other or further obligations to Executive under this Agreement (including any financial obligations) except that Executive shall be entitled to receive the Accrued Obligations. In addition, if Executive's employment is terminated by the Company for Cause or by Executive without Good Reason, or as a result of Executive's death or discharge by the Company following Executive's Permanent Disability, all vesting of Executive's unvested Stock Awards previously granted to his by the Company shall cease and none of such unvested Stock Awards shall be exercisable following the date of such termination. The foregoing shall be in addition to, and not in lieu of, any and all other rights and remedies which may be available to the Company under the circumstances, whether at law or in equity.

(d) Release. As a condition to Executive's receipt of any post-termination benefits described in this Agreement (other than Section 4(a)), Executive shall execute and not revoke a general release of all claims in favor of the Company (the "Release") in the form attached hereto as Exhibit A. Such Release shall specifically relate to all of Executive's rights and claims in existence at the time of such execution, including any claims related to Executive's employment by the Company and his termination of employment, and shall exclude any continuing obligations the Company may have to Executive following the date of termination under this Agreement or any other agreement providing for obligations to survive Executive's termination of employment. In the event Executive's Release does not become effective within the fifty-five (55) day period following the date of Executive's Separation from Service, Executive shall not be entitled to any payments and benefits described in Section 4, other than those payable under Section 4(a).

(e) Exclusive Remedy. Except as otherwise expressly required by law (e.g., COBRA) or as specifically provided herein, all of Executive's rights to salary, severance, benefits, bonuses and other amounts hereunder (if any) accruing after the termination of Executive's employment shall cease upon such termination. In the event of a termination of Executive's employment with the Company, Executive's sole remedy shall be to receive the payments and benefits described in this Section 4. In addition, Executive acknowledges and agrees that he is not entitled to any reimbursement by the Company for any taxes payable by Executive as a result of the payments and benefits received by Executive pursuant to this Section 4, including, without limitation, any excise tax imposed by Section 4999 of the Code.

(f) Mitigation. The amount of any payment or benefit provided for in this Section 4 shall be reduced by any compensation earned by Executive as the result of employment by another employer or self-employment and, as provided in Section 4(b), Executive's (or his dependents') right to continued healthcare and life insurance benefits following his termination of employment

will terminate on the date on which the applicable continuation period under COBRA expires. In addition, loans, advances or other amounts owed by Executive to the Company may be offset by the Company against amounts payable to Executive under this Section 4. Executive shall use his reasonable best efforts to obtain other employment following the date of termination.

(g) Return of the Company's Property. If Executive's employment is terminated for any reason, the Company shall have the right, at its option, to require Executive to vacate his offices prior to or on the effective date of termination and to cease all activities on the Company's behalf. Upon the termination of his employment in any manner, as a condition to the Executive's receipt of any post-termination benefits described in this Agreement, Executive shall immediately surrender to the Company all lists, books and records of, or in connection with, the Company's business, and all other property belonging to the Company, it being distinctly understood that all such lists, books and records, and other documents, are the property of the Company. Executive shall deliver to the Company a signed statement certifying compliance with this Section 4(g) prior to the receipt of any post-termination benefits described in this Agreement.

(h) Waiver of the Company's Liability. Executive recognizes that his employment is subject to termination with or without Cause for any reason and therefore Executive agrees that Executive shall hold the Company harmless from and against any and all liabilities, losses, damages, costs and expenses, including but not limited to, court costs and reasonable attorneys' fees, which Executive may incur as a result of the termination of Executive's employment. Executive further agrees that Executive shall bring no claim or cause of action against the Company for damages or injunctive relief based on a wrongful termination of employment. Executive agrees that the sole liability of the Company to Executive upon termination of this Agreement shall be that determined by this Section 4. In the event this covenant is more restrictive than permitted by laws of the jurisdiction in which the Company seeks enforcement thereof, this covenant shall be limited to the extent permitted by law.

5. Certain Covenants.

1.1.1. Noncompetition. Except as may otherwise be approved by the Board, during the term of Executive's employment, Executive shall not have any ownership interest (of record or beneficial) in, or have any interest as an employee, salesman, consultant, officer or director in, or otherwise aid or assist in any manner, any firm, corporation, partnership, proprietorship or other business that engages in any county, city or part thereof in the United States and/or any foreign country in a business which competes directly or indirectly (as determined by the Board) with the Company's business in such county, city or part thereof, so long as the Company, or any successor in interest of the Company to the business and goodwill of the Company, remains engaged in such business in such county, city or part thereof or continues to solicit customers or potential customers therein; provided, however, that Executive may own, directly or indirectly, solely as an investment, securities of any entity which are traded on any national securities exchange if Executive (x) is not a controlling person of, or a member of a group which controls, such entity; or (y) does not, directly or indirectly, own one percent (1%) or more of any class of securities of any such entity.

1.1.2. Confidential Information. Executive and the Company have entered into the Company's standard employee proprietary information and inventions agreement (the "Employee Proprietary Information and Inventions Agreement"). Executive agrees to perform each and every obligation of Executive therein contained.

1.1.3. Solicitation of Employees. Executive shall not during the term of Executive's employment and for the applicable severance period for which Executive receives severance benefits following any termination hereof pursuant to Section 4(b) above (regardless of whether Executive receives such severance benefits in a lump sum payment or over the length of the severance period) (the "Restricted Period"), directly or indirectly, solicit or encourage to leave the employment of the Company or any of its affiliates, any employee of the Company or any of its affiliates.

1.1.4. Solicitation of Consultants. Executive shall not during the term of Executive's employment and for the Restricted Period, directly or indirectly, hire, solicit or encourage to cease work with the Company or any of its affiliates any consultant then under contract with the Company or any of its affiliates within one year of the termination of such consultant's engagement by the Company or any of its affiliates.

1.1.5. Rights and Remedies Upon Breach. If Executive breaches or threatens to commit a breach of any of the provisions of this Section 5 (the "Restrictive Covenants"), the Company shall have the following rights and remedies, each of which rights and remedies shall be independent of the other and severally enforceable, and all of which rights and remedies shall be in addition to, and not in lieu of, any other rights and remedies available to the Company under law or in equity:

i. Specific Performance. The right and remedy to have the Restrictive Covenants specifically enforced by any court having equity jurisdiction, all without the need to post a bond or any other security or to prove any amount of actual damage or that money damages would not provide an adequate remedy, it being acknowledged and agreed that any such breach or threatened breach will cause irreparable injury to the Company and that money damages will not provide adequate remedy to the Company;

ii. Accounting and Indemnification. The right and remedy to require Executive (i) to account for and pay over to the Company all compensation, profits, monies, accruals, increments or other benefits derived or received by Executive or any associated party deriving such benefits as a result of any such breach of the Restrictive Covenants; and (ii) to indemnify the Company against any other losses, damages (including special and consequential damages), costs and expenses, including actual attorneys' fees and court costs, which may be incurred by them and which result from or arise out of any such breach or threatened breach of the Restrictive Covenants; and

iii. Cessation of Payments. The right to cease all severance payments to Executive hereunder.

(f) Severability of Covenants/Blue Penciling. If any court determines that any of the Restrictive Covenants, or any part thereof, is invalid or unenforceable, the remainder of the Restrictive Covenants shall not thereby be affected and shall be given full effect, without regard to the invalid portions. If any court determines that any of the Restrictive Covenants, or any part thereof, are unenforceable because of the duration of such provision or the area covered thereby, such court shall have the power to reduce the duration or area of such provision and, in its reduced form, such provision shall then be enforceable and shall be enforced. Executive hereby waives any and all right to attack the validity of the Restrictive Covenants on the grounds of the breadth of their geographic scope or the length of their term.

(g) Enforceability in Jurisdictions. The Company and Executive intend to and do hereby confer jurisdiction to enforce the Restrictive Covenants upon the courts of any jurisdiction within the geographical scope of such covenants. If the courts of any one or more of such jurisdictions hold the Restrictive Covenants wholly unenforceable by reason of the breadth of such scope or otherwise, it is the intention of the Company and Executive that such determination not bar or in any way affect the right of the Company to the relief provided above in the courts of any other jurisdiction within the geographical scope of such covenants, as to breaches of such covenants in such other respective jurisdictions, such covenants as they relate to each jurisdiction being, for this purpose, severable into diverse and independent covenants.

(h) Whistleblower Provision. Executive acknowledges that the Company has provided Executive with the following notice of immunity rights in compliance with the requirements of the Defend Trade Secrets Act: (i) Executive shall not be held criminally or civilly liable under any Federal or State trade secret law for the disclosure of proprietary information that is made in confidence to a Federal, State, or local government official or to an attorney solely for the purpose of reporting or investigating a suspected violation of law, (ii) Executive shall not be held criminally or civilly liable under any Federal or State trade secret law for the disclosure of proprietary information that is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal and (iii) if Executive files a lawsuit for retaliation by the Company for reporting a suspected violation of law, Executive may disclose the proprietary information to Executive's attorney and use the proprietary information in the court proceeding, if Executive files any document containing the proprietary information under seal, and does not disclose the proprietary information, except pursuant to court order.In addition, nothing in this Agreement or the Employee Proprietary Information and Inventions Agreement shall prevent Executive from (x) communicating directly with, cooperating with, or providing information to, or receiving financial awards from, any federal, state or local government agency, including without limitation the U.S. Securities and Exchange Commission, the U.S. Commodity Futures Trading Commission, the U.S. Department of Justice, the U.S. Equal Employment Opportunity Commission, or the U.S. National Labor Relations Board, without notifying or seeking permission from the Company, (y) exercising any rights Executive may have under Section 7 of the U.S. National Labor Relations Act, such as the right to engage in concerted activity, including collective action or discussion concerning wages or working conditions, or (z) discussing or disclosing information about unlawful acts in the workplace, such as harassment or discrimination based on a protected characteristic or any other conduct that Executive has reason to believe is unlawful.

(i) Definitions. For purposes of this Section 5, the term "Company" means not only Evoke Pharma, Inc., but also any company, partnership or entity which, directly or indirectly, controls, is controlled by or is under common control with Evoke Pharma, Inc.

6. Insurance. The Company shall have the right to take out life, health, accident, "key-man" or other insurance covering Executive, in the name of the Company and at the Company's expense in any amount deemed appropriate by the Company. Executive shall assist the Company in obtaining such insurance, including, without limitation, submitting to any required examinations and providing information and data required by insurance companies.

7. Arbitration. To the extent permitted by applicable law, any dispute, claim or controversy based on, arising out of or relating to Executive's employment or this Agreement shall be settled by final and binding arbitration in San Diego, California, before a single neutral arbitrator in accordance with the National Rules for the Resolution of Employment Disputes (the "Rules") of the American Arbitration Association, and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction.The Rules may be found online at www.adr.org or will be provided to Executive upon request. Arbitration may be compelled pursuant to the California Arbitration Act (Code of Civil Procedure §§ 1280 etseq.). If the parties are unable to agree upon an arbitrator, one shall be appointed by the AAA in accordance with its Rules. Each party shall pay the fees of its own attorneys, the expenses of its witnesses and all other expenses connected with presenting its case; however, Executive and the Company agree that, to the extent permitted by law, the arbitrator may, in his or hers discretion, award reasonable attorneys' fees to the prevailing party. Other costs of the arbitration, including

the cost of any record or transcripts of the arbitration, AAA's administrative fees, the fee of the arbitrator, and all other fees and costs, shall be borne by the Company. This Section 7 is intended to be the exclusive method for resolving any and all claims by the parties against each other for payment of damages under this Agreement or relating to Executive's employment; provided, however, that Executive shall retain the right to file administrative charges with or seek relief through any government agency of competent jurisdiction, and to participate in any government investigation, including but not limited to (i) claims for workers' compensation, state disability insurance or unemployment insurance; (ii) claims for unpaid wages or waiting time penalties brought before the California Division of Labor Standards Enforcement or other administrative claims brought before any state or federal governmental authority; provided, however, that any appeal from an award or from denial of an award of wages and/or waiting time penalties shall be arbitrated pursuant to the terms of this Agreement; and (iii) claims for administrative relief from the United States Equal Employment Opportunity Commission and/or the California Department of Fair Employment and Housing (or any similar agency in any applicable jurisdiction other than California); provided,further, that Executive shall not be entitled to obtain any monetary relief through such agencies other than workers' compensation benefits or unemployment insurance benefits. This Agreement shall not limit either party's right to obtain any provisional remedy, including, without limitation, injunctive or similar relief pursuant to California Code of Civil Procedure § 1281.8 or any similar statute of an applicable jurisdiction, from any court of competent jurisdiction as may be necessary to protect their rights and interests pending the outcome of arbitration, including without limitation injunctive relief, in any court of competent jurisdiction pursuant to California Code of Civil Procedure § 1281.8 or any similar statute of an applicable jurisdiction. Seeking any such relief shall not be deemed to be a waiver of such party's right to compel arbitration. Both Executive and the Company expressly waive their right to a jury trial.

8. General Relationship. Executive shall be considered an employee of the Company within the meaning of all federal, state and local laws and regulations including, but not limited to, laws and regulations governing unemployment insurance, workers' compensation, industrial accident, labor and taxes.

9. Miscellaneous.

(a) Modification; Prior Claims. This Agreement and the Employee Proprietary Information and Inventions Agreement (and the other documents referenced herein and therein) set forth the entire understanding of the parties with respect to the subject matter hereof, supersede all existing agreements, including the Prior Agreement, between them concerning such subject matter, and may be modified only by a written instrument duly executed by each party.

(b) Assignment; Assumption by Successor. The rights of the Company under this Agreement may, without the consent of Executive, be assigned by the Company, in its sole and unfettered discretion, to any person, firm, corporation or other business entity which at any time, whether by purchase, merger or otherwise, directly or indirectly, acquires all or substantially all of the assets or business of the Company. The Company will require any successor (whether direct or indirect, by purchase, merger or otherwise) to all or substantially all of the business or assets of the Company expressly to assume and to agree to perform this Agreement in the same manner and to the same extent that the Company would be required to perform it if no such succession had taken place; provided, however, that no such assumption shall relieve the Company of its obligations hereunder. As used in this Agreement, the "Company" shall mean the Company as hereinbefore defined and any successor to its business and/or assets as aforesaid which assumes and agrees to perform this Agreement by operation of law or otherwise.

(c) Survival. The covenants, agreements, representations and warranties contained in or made in Sections 4, 5, 7 and 9 of this Agreement shall survive any termination of Executive's employment.

(d) Third-Party Beneficiaries. This Agreement does not create, and shall not be construed as creating, any rights enforceable by any person not a party to this Agreement.

(e) Waiver. The failure of either party hereto at any time to enforce performance by the other party of any provision of this Agreement shall in no way affect such party's rights thereafter to enforce the same, nor shall the waiver by either party of any breach of any provision hereof be deemed to be a waiver by such party of any other breach of the same or any other provision hereof.

(f) Section Headings. The headings of the several sections in this Agreement are inserted solely for the convenience of the parties and are not a part of and are not intended to govern, limit or aid in the construction of any term or provision hereof.

(g) Notices. Any notice required or permitted by this Agreement shall be in writing and shall be delivered as follows with notice deemed given as indicated: (i) by personal delivery when delivered personally; (ii) by overnight courier upon written verification of receipt; (iii) by email, telecopy or facsimile transmission upon acknowledgment of receipt of electronic transmission; or (iv) by certified or registered mail, return receipt requested, upon verification of receipt. Notice shall be sent to Executive at the address listed on the Company's personnel records and to the Company at its principal place of business, or such other address as either party may specify in writing.

(h) Severability. All Sections, clauses and covenants contained in this Agreement are severable, and in the event any of them shall be held to be invalid by any court, this Agreement shall be interpreted as if such invalid Sections, clauses or covenants were not contained herein.

(i) Governing Law and Venue. This Agreement is to be governed by and construed in accordance with the laws of the State of California applicable to contracts made and to be performed wholly within such State, and without regard to the conflicts of laws principles thereof. Except as provided in Sections 5 and 7, any suit brought hereon shall be brought in the state or federal courts sitting in San Diego, California, the parties hereto hereby waiving any claim or defense that such forum is not convenient or proper. Each party hereby agrees that any such court shall have in personam jurisdiction over it and consents to service of process in any manner authorized by California law.

(j) Non-transferability of Interest. None of the rights of Executive to receive any form of compensation payable pursuant to this Agreement shall be assignable or transferable except through a testamentary disposition or by the laws of descent and distribution upon the death of Executive. Any attempted assignment, transfer, conveyance, or other disposition (other than as aforesaid) of any interest in the rights of Executive to receive any form of compensation to be made by the Company pursuant to this Agreement shall be void.

(k) Gender. Where the context so requires, the use of the masculine gender shall include the feminine and/or neuter genders and the singular shall include the plural, and vice versa, and the word "person" shall include any corporation, firm, partnership or other form of association.

(l) Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement.

(m) Construction. The language in all parts of this Agreement shall in all cases be construed simply, according to its fair meaning, and not strictly for or against any of the parties hereto. Without limitation, there shall be no presumption against any party on the ground that such party was responsible for drafting this Agreement or any part thereof.

(n) Withholding and other Deductions. All compensation payable to Executive hereunder shall be subject to such deductions as the Company is from time to time required to make pursuant to law, governmental regulation or order.

(o) Code Section 409A.

(i) This Agreement is not intended to provide for any deferral of compensation subject to Section 409A of the Code, and, accordingly, the post-termination payments payable under Section 4(b) shall be paid no later than the later of: (A) the fifteenth (15th) day of the third month following Executive's first taxable year in which such severance benefit is no longer subject to a substantial risk of forfeiture, and (B) the fifteenth (15th) day of the third month following first taxable year of the Company in which such severance benefit is no longer subject to substantial risk of forfeiture, as determined in accordance with Code Section 409A and any Treasury Regulations and other guidance issued thereunder. To the extent applicable, this Agreement shall be interpreted in accordance with Code Section 409A and Department of Treasury regulations and other interpretive guidance issued thereunder. Each series of installment payments made under this Agreement is hereby designated as a series of "separate payments" within the meaning of Section 409A of the Code. For purposes of this Agreement, all references to Employee's "termination of employment" shall mean Employee's Separation from Service.

(ii) If the Executive is a "specified employee" (as defined in Section 409A of the Code), as determined by the Company in accordance with Section 409A of the Code, on the date of the Executive's Separation from Service, to the extent that the payments or benefits under this Agreement are subject to Section 409A of the Code and the delayed payment or distribution of all or any portion of such amounts to which Executive is entitled under this Agreement is required in order to avoid a prohibited distribution under Section 409A(a)(2)(B)(i) of the Code, then such portion deferred pursuant to this Section 10(o)(ii) shall be paid or distributed to Executive in a lump sum on the earlier of (A) the date that is six (6) months following Executive's Separation from Service, (B) the date of Executive's death or (C) the earliest date as is permitted under Section 409A of the Code. Any remaining payments due under the Agreement shall be paid as otherwise provided herein.

(iii) To the extent applicable, this Agreement shall be interpreted in accordance with the applicable exemptions from Section 409A of the Code. If Executive and the Company determine that any payments or benefits payable under this Agreement intended to comply with Sections 409A(a)(2), (3) and (4) of the Code do not comply with Section 409A of the Code, Executive and the Company agree to amend this Agreement, or take such other actions as Executive and the Company deem reasonably necessary or appropriate, to comply with the requirements of Section 409A of the Code and the Treasury Regulations thereunder (and any applicable transition relief) while preserving the economic agreement of the parties. To the extent that any provision in this Agreement is ambiguous as to its compliance with Section 409A of the Code, the provision shall be read in such a manner that no payments payable under this Agreement shall be subject to an "additional tax" as defined in Section 409A(a)(1)(B) of the Code.

iv. Any reimbursement of expenses or in-kind benefits payable under this Agreement shall be made in accordance with Treasury Regulation Section 1.409A-3(i)(1)(iv) and shall be paid on or before the last day of Executive's taxable year following the taxable year in which Executive incurred the expenses. The amount of expenses reimbursed or in-kind benefits payable in one year shall not affect the amount eligible for reimbursement or in-kind benefits payable in any other taxable year of Executive's, and Executive's right to reimbursement for such amounts shall not be subject to liquidation or exchange for any other benefit.

v. In the event that the amounts payable under Section 4(b) are subject to Section 409A of the Code and the timing of the delivery of Executive's Release could cause such amounts to be paid in one or another taxable year, then notwithstanding the payment timing set forth in such Section, such amounts shall not be payable until the later of (i) the payment date specified in such section or (ii) the first business day of the taxable year following the Executive's Separation from Service.

(Signature Page Follows)

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first set forth above.

EVOKE PHARMA, INC.

By: /s/ Matthew J. D'Onofrio
Name: Matthew J. D'Onofrio
Title: Chief Executive Officer

/s/ Mark Kowieski
Mark Kowieski

EXHIBIT A

GENERAL RELEASE OF CLAIMS

[*The language in this Release may change based on legal developments and evolving best practices; this form is provided as an example of what will be included in the final Release document.*]

This General Release of Claims ("Release") is entered into as of this _____ day of _____, ____, between Mark Kowieski ("Executive"), and Evoke Pharma, Inc., a Delaware corporation (the "Company") (collectively referred to herein as the "Parties").

WHEREAS, Executive and the Company are parties to that certain Amended and Restated Employment Agreement dated as of August 8, 2024 (the "Agreement");

WHEREAS, the Parties agree that Executive is entitled to certain severance benefits under the Agreement, subject to Executive's execution of this Release; and

WHEREAS, the Company and Executive now wish to fully and finally to resolve all matters between them.

NOW, THEREFORE, in consideration of, and subject to, the severance benefits payable to Executive pursuant to the Agreement, the adequacy of which is hereby acknowledged by Executive, and which Executive acknowledges that he would not otherwise be entitled to receive, Executive and the Company hereby agree as follows:

1. General Release of Claims by Executive.

(a) Executive, on behalf of himself and his executors, heirs, administrators, representatives and assigns, hereby agrees to release and forever discharge the Company and all predecessors, successors and their respective parent corporations, affiliates, related, and/or subsidiary entities, and all of their past and present investors, directors, shareholders, officers, general or limited partners, employees, attorneys, agents and representatives, and the employee benefit plans in which Executive is or has been a participant by virtue of his employment with or service to the Company (collectively, the "Company Releasees"), from any and all claims, debts, demands, accounts, judgments, rights, causes of action, equitable relief, damages, costs, charges, complaints, obligations, promises, agreements, controversies, suits, expenses, compensation, responsibility and liability of every kind and character whatsoever (including attorneys' fees and costs), whether in law or equity, known or unknown, asserted or unasserted, suspected or unsuspected (collectively, "Claims"), which Executive has or may have had against such entities based on any events or circumstances arising or occurring on or prior to the date hereof or on or prior to the date hereof, arising directly or indirectly out of, relating to, or in any other way involving in any manner whatsoever Executive's employment by or service to the Company or the termination thereof, including any and all claims arising under federal, state, or local laws relating to employment, including without limitation claims of wrongful discharge, breach of express or implied contract, fraud, misrepresentation, defamation, or liability in tort, and claims of any kind that may be brought in any court or administrative agency including, without limitation, claims under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. Section 2000, et seq.; the Americans with Disabilities Act, as amended, 42 U.S.C. § 12101 et seq.; the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 701 et seq.; the Civil Rights Act of 1866, and the Civil Rights Act of 1991; 42 U.S.C. Section 1981, et seq.; the Age Discrimination in Employment Act, as amended, 29 U.S.C. Section 621, et seq. (the "ADEA"); the Equal Pay Act, as amended, 29 U.S.C. Section 206(d); regulations of the Office of Federal Contract Compliance, 41 C.F.R. Section 60, et seq.; the Family and Medical Leave Act, as amended, 29 U.S.C. § 2601 et seq.; the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. § 201 etseq.; the Employee Retirement Income Security Act, as amended, 29 U.S.C. § 1001 et seq.; and the California Fair Employment and Housing Act, California Government Code Section 12940, et seq.

Notwithstanding the generality of the foregoing, Executive does not release the following claims:

(i) Claims for unemployment compensation or any state disability insurance benefits pursuant to the terms of applicable state law;

(ii) Claims for workers' compensation insurance benefits under the terms of any worker's compensation insurance policy or fund of the Company;

(iii) Claims pursuant to the terms and conditions of the federal law known as COBRA;

(iv) Claims for indemnity under the bylaws of the Company, as provided for by California law or under any applicable insurance policy with respect to Executive's liability as an employee, director or officer of the Company;

(v) Claims based on any right Executive may have to enforce the Company's executory obligations under the Agreement;

(vi) Claims Executive may have to vested or earned compensation and benefits;

(vii) Executive's right to bring to the attention of the Equal Employment Opportunity Commission or any other federal, state or local government agency claims of discrimination, or from participating in an investigation or proceeding conducted by the Equal Employment Opportunity Commission or any other federal, state or local government agency; provided, however, that Executive does release his or her right to secure any damages for alleged discriminatory treatment; and

(viii) Executive's right to communicate or cooperate with any government agency.

(b) EXECUTIVE ACKNOWLEDGES THAT HE HAS BEEN ADVISED OF AND IS FAMILIAR WITH THE PROVISIONS OF CALIFORNIA CIVIL CODE SECTION 1542, WHICH PROVIDES AS FOLLOWS:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY."

BEING AWARE OF SAID CODE SECTION, EXECUTIVE HEREBY EXPRESSLY WAIVES ANY RIGHTS HE MAY HAVE THEREUNDER, AS WELL AS UNDER ANY OTHER STATUTES OR COMMON LAW PRINCIPLES OF SIMILAR EFFECT.

(c) Executive acknowledges that this Release was presented to his on the date indicated above and that Executive is entitled to have [twenty-one (21)][forty-five (45)] days' time in which to consider it. Executive further acknowledges that the Company has advised his that he is waiving his rights under the ADEA, and that Executive should consult with an attorney of his choice before signing this Release, and Executive has had sufficient time to consider the terms of this Release. Executive represents and acknowledges that if Executive executes this Release before [twenty-one (21)][forty-five (45)] days have elapsed, Executive does so knowingly, voluntarily, and upon the advice and with the approval of Executive's legal counsel (if any), and that Executive voluntarily waives any remaining consideration period.

(d) Executive understands that after executing this Release, Executive has the right to revoke it within seven (7) days after his execution of it. Executive understands that this Release will not become effective and enforceable unless the seven (7) day revocation period passes and Executive does not revoke the Release in writing. Executive understands that this Release may not be revoked after the seven (7) day revocation period has passed. Executive also understands that any revocation of this Release must be made in writing and delivered to the Company at its principal place of business within the seven (7) day period.

(e) Executive understands that this Release shall become effective, irrevocable, and binding upon Executive on the eighth (8 th) day after his execution of it, so long as Executive has not revoked it within the time period and in the manner specified in clause (d) above.

(f) Executive further understands that Executive will not be given any severance benefits under the Agreement unless this Release is effective on or before the date that is fifty-five (55) days following the date of Executive's termination of employment.

2. No Assignment. Executive represents and warrants to the Company Releasees that there has been no assignment or other transfer of any interest in any Claim that Executive may have against the Company Releasees. Executive agrees to indemnify and hold harmless the Company Releasees from any liability, claims, demands, damages, costs, expenses and attorneys' fees incurred as a result of any such assignment or transfer from Executive.

3. Severability. In the event any provision of this Release is found to be unenforceable by an arbitrator or court of competent jurisdiction, such provision shall be deemed modified to the extent necessary to allow enforceability of the provision as so limited, it being intended that the parties shall receive the benefit contemplated herein to the fullest extent permitted by law. If a deemed modification is not satisfactory in the judgment of such arbitrator or court, the unenforceable provision shall be deemed deleted, and the validity and enforceability of the remaining provisions shall not be affected thereby.

4. Interpretation; Construction. The headings set forth in this Release are for convenience only and shall not be used in interpreting this Agreement. This Release has been drafted by legal counsel representing the Company, but Executive has participated in the negotiation of its terms. Furthermore, Executive acknowledges that Executive has had an opportunity to review and revise the Release and have it reviewed by legal counsel, if desired, and, therefore, the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Release. Either party's failure to enforce any provision of this Release shall not in any way be construed as a waiver of any such provision, or prevent that party thereafter from enforcing each and every other provision of this Release.

5. Governing Law and Venue. This Release will be governed by and construed in accordance with the laws of the United States of America and the State of California applicable to contracts made and to be performed wholly within such State, and without regard to the conflicts of laws principles thereof. Any suit brought hereon shall be brought in the state or federal courts sitting in San Diego County, California, the Parties hereby waiving any claim or defense that such forum is not convenient or proper. Each party hereby agrees that any such court shall have in personam jurisdiction over it and consents to service of process in any manner authorized by California law.

6. Entire Agreement. This Release and the Agreement constitute the entire agreement of the Parties in respect of the subject matter contained herein and therein and supersede all prior or simultaneous representations, discussions, negotiations and agreements, whether written or oral. This Release may be amended or modified only with the written consent of Executive and an authorized representative of the Company. No oral waiver, amendment or modification will be effective under any circumstances whatsoever.

7. Counterparts. This Release may be executed in multiple counterparts, each of which shall be deemed to be an original but all of which together shall constitute one and the same instrument.

(Signature Page Follows)

IN WITNESS WHEREOF, and intending to be legally bound, the Parties have executed the foregoing Release as of the date first written above.

EXECUTIVE

/s/ Mark Kowieski

Print Name: Mark Kowieski

EVOKE PHARMA, INC.

By: /s/ Matthew J. D'Onofrio

Print Name: Matthew J. D'Onofrio

Title: Chief Executive Officer

Exhibit 10.3

AMENDED AND RESTATED EMPLOYMENT AGREEMENT

THIS AMENDED AND RESTATED EMPLOYMENT AGREEMENT (this "Agreement") is entered into by and between Evoke Pharma, Inc., a Delaware corporation (the "Company"), and Marilyn Carlson, M.D. ("Executive"), and shall be effective as of August 8, 2024 (the "Effective Date").

WHEREAS, the Company and Executive desire to amend and restate that certain Employment Agreement by and between the Company and Executive, dated as of December 1, 2013, and amended as of January 25, 2017 (together, the "Prior Agreement") on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual promises herein contained, the parties agree as follows:

1. Definitions. As used in this Agreement, the following terms shall have the following meanings:

(a) Board. "Board" means the Board of Directors of the Company.

(b) Bonus. "Bonus" means an amount equal to the greater of (i) Executive's target annual bonus for the fiscal year in which the date of termination occurs, or (ii) the bonus awarded to Executive for the fiscal year prior to the date of termination (which bonus shall be annualized to the extent Executive was not employed for the entire fiscal year prior to the date of termination). If any portion of the bonuses awarded to Executive consisted of securities or other property, the fair market value thereof shall be determined in good faith by the Board.

(c) Cause. "Cause" means any of the following:

(i) the commission of an act of fraud, embezzlement or dishonesty by Executive that has a material adverse impact on the Company or any successor or affiliate thereof;

(ii) a conviction of, or plea of "guilty" or "no contest" to, a felony by Executive;

(iii) any unauthorized use or disclosure by Executive of confidential information or trade secrets of the Company or any successor or affiliate thereof that has a material adverse impact on any such entity;

(iv) Executive's gross negligence, insubordination or material violation of any duty of loyalty to the Company or any other material misconduct on the part of Executive;

(v) Executive's ongoing and repeated failure or refusal to perform or neglect of Executive's duties as required by this Agreement, which failure, refusal or neglect continues for fifteen (15) days following Executive's receipt of written notice from the Board or the Company's Chief Executive Officer (the "CEO") stating with specificity the nature of such failure, refusal or neglect; or

(vi) Executive's breach of any material provision of this Agreement;

provided, however, that prior to the determination that "Cause" under this Section 1(c) has occurred (other than clauses (ii) and (v)), the Company shall (w) provide to Executive in writing, in reasonable detail, the reasons for the determination that such "Cause" exists, (x) other than with respect to clause (v) above which specifies the applicable period of time for Executive to remedy her breach, afford Executive a reasonable opportunity to remedy any such breach, (y) provide the Executive an opportunity to be heard prior to the final decision to terminate the Executive's employment hereunder for such "Cause" and (z) make any decision that such "Cause" exists in good faith.

The foregoing definition shall not in any way preclude or restrict the right of the Company or any successor or affiliate thereof to discharge or dismiss Executive for any other acts or omissions, but such other acts or omissions shall not be deemed, for purposes of this Agreement, to constitute grounds for termination for Cause.

(d) Change of Control. "Change of Control" means and includes each of the following:

(i) the acquisition, directly or indirectly, by any "person" or "group" (as those terms are defined in Sections 3(a)(9), 13(d), and 14(d) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and the rules thereunder) of "beneficial ownership" (as determined pursuant to Rule 13d-3 under the Exchange Act) of securities entitled to vote generally in the

election of directors ("voting securities") of the Company that represent fifty percent (50%) or more of the combined voting power of the Company's then outstanding voting securities, other than:

(1) an acquisition by a trustee or other fiduciary holding securities under any employee benefit plan (or related trust) sponsored or maintained by the Company or any person controlled by the Company or by any employee benefit plan (or related trust) sponsored or maintained by the Company or any person controlled by the Company, or

(2) an acquisition of voting securities by the Company or a corporation owned, directly or indirectly, by the stockholders of the Company in substantially the same proportions as their ownership of the stock of the Company, or

(3) an acquisition of voting securities pursuant to a transaction described in Section 1(d)(ii) below that would not be a Change of Control under Section 1(d)(ii);

Notwithstanding the foregoing, the following event shall not constitute an "acquisition" by any person or group for purposes of this Section 1(d): an acquisition of the Company's securities by the Company which causes the Company's voting securities beneficially owned by a person or group to represent fifty percent (50%) or more of the combined voting power of the Company's then outstanding voting securities; provided, however, that if a person or group shall become the beneficial owner of fifty percent (50%) or more of the combined voting power of the Company's then outstanding voting securities by reason of share acquisitions by the Company as described above and shall, after such share acquisitions by the Company, become the beneficial owner of any additional voting securities of the Company, then such acquisition shall constitute a Change of Control; or

(ii) the consummation by the Company (whether directly involving the Company or indirectly involving the Company through one or more intermediaries) of a merger, consolidation, reorganization, or business combination, a sale or other disposition of all or substantially all of the Company's assets, or the acquisition of assets or stock of another entity, in each case, other than a transaction:

(1) which results in the Company's voting securities outstanding immediately before the transaction continuing to represent (either by remaining outstanding or by being converted into voting securities of the Company or the person that, as a result of the transaction, controls, directly or indirectly, the Company or owns, directly or indirectly, all or substantially all of the Company's assets or otherwise succeeds to the business of the Company (the Company or such person, the "Successor Entity")) directly or indirectly, at least 50% of the combined voting power of the Successor Entity's outstanding voting securities immediately after the transaction, and

(2) after which no person or group beneficially owns voting securities representing fifty percent (50%) or more of the combined voting power of the Successor Entity; provided, however, that no person or group shall be treated for purposes of this subsection (d)(ii) as beneficially owning fifty percent (50%) or more of combined voting power of the Successor Entity solely as a result of the voting power held in the Company prior to the consummation of the transaction; or

(iii) the Company's stockholders approve a liquidation or dissolution of the Company.

Notwithstanding the foregoing, a transaction shall not constitute a "Change of Control" if: (i) its sole purpose is to change the state of the Company's incorporation; (ii) its sole purpose is to create a holding company that will be owned in substantially the same proportions by the persons who held the Company's securities immediately before such transaction; or (iii) it is a transaction effected primarily for the purpose of financing the Company with cash (as determined by the Board in its discretion and without regard to whether such transaction is effectuated by a merger, equity financing or otherwise). The Board shall have full and final authority, which shall be exercised in its sole discretion, to determine conclusively whether a Change of Control of the Company has occurred pursuant to the above definition, and the date of the occurrence of such Change of Control and any incidental matters relating thereto.

(e) Code. "Code" means the Internal Revenue Code of 1986, as amended from time to time, and the Treasury Regulations and other interpretive guidance issued thereunder.

(f) Good Reason. "Good Reason" means the occurrence of any of the following events or conditions without Executive's written consent:

(i) a material diminution in Executive's authority, duties or responsibilities;

(ii) a material diminution in Executive's base compensation, except in connection with a general reduction in the compensation of the Company's or any successor's or affiliate's personnel with similar status and responsibilities;

(iii) the Company's or any successor's or affiliate's requiring Executive (without Executive's consent) to be based at any place outside a 50-mile radius of her place of employment as of the Effective Date, except for reasonably required

travel on the Company's or any successor's or affiliate's business that is not materially greater than such travel requirements prior to the Effective Date; or

(iv) any material breach by the Company or any successor or affiliate of its obligations to Executive under this Agreement.

Executive must provide written notice to the Company of the occurrence of any of the foregoing events or conditions without Executive's written consent within ninety (90) days of the occurrence of such event. The Company or any successor or affiliate shall have a period of thirty (30) days to cure such event or condition after receipt of written notice of such event from Executive. Any voluntary Separation from Service for "Good Reason" following such thirty (30) day cure period must occur no later than the date that is six (6) months following the initial occurrence of one of the foregoing events or conditions without Executive's written consent. Executive's voluntary Separation from Service by reason of resignation from employment with the Company for Good Reason shall be treated as involuntary.

(g) Involuntary Termination. "Involuntary Termination" means (i) the Executive's Separation from Service by reason of Executive's discharge by the Company other than for Cause, or (ii) the Executive's Separation from Service by reason of Executive's resignation of employment with the Company for Good Reason. Executive's Separation from Service by reason of Executive's death or discharge by the Company following Executive's Permanent Disability shall not constitute an Involuntary Termination.

(h) Permanent Disability. Executive's "Permanent Disability" shall be deemed to have occurred if Executive shall become physically or mentally incapacitated or disabled or otherwise unable fully to discharge her duties hereunder for a period of ninety (90) consecutive calendar days or for one hundred twenty (120) calendar days in any one hundred eighty (180) calendar-day period. The existence of Executive's Permanent Disability shall be determined by the Company on the advice of a physician chosen by the Company and the Company reserves the right to have the Executive examined by a physician chosen by the Company at the Company's expense.

(i) Separation from Service. Executive's Separation from Service means her "separation from service," within the meaning of Section 409A(a)(2)(A)(i) of the Code and Treasury Regulation Section 1.409A-1(h) thereunder.

(j) Stock Awards. "Stock Awards" means all stock options, restricted stock and such other awards granted pursuant to the Company's stock option and equity incentive award plans or agreements and any shares of stock issued upon exercise thereof.

2. Services to Be Rendered.

(a) Duties and Responsibilities. Executive shall continue to serve as Chief Medical Officer of the Company. In the performance of such duties, Executive shall report directly to the CEO and shall be subject to the direction of the CEO and to such limits upon Executive's authority as the CEO may from time to time impose. In the event of the CEO's incapacity or unavailability, Executive shall be subject to the direction of the Board or its designee. Executive hereby consents to serve as an officer and/or director of the Company or any subsidiary or affiliate thereof without any additional salary or compensation, if so requested by the CEO. Executive's primary place of work shall be the Company's facility in San Diego, California, or such other location within San Diego County as may be designated by the CEO from time to time. Executive shall also render services at such other places within or outside the United States as the CEO may direct from time to time. Executive shall be subject to and comply with the policies and procedures generally applicable to senior executives of the Company to the extent the same are not inconsistent with any term of this Agreement.

(b) Exclusive Services. Executive shall at all times faithfully, industriously and to the best of her ability, experience and talent perform to the satisfaction of the Board and the CEO all of the duties that may be assigned to Executive hereunder and shall devote at least eighty percent (80%) of her productive time and efforts to the performance of such duties. Subject to the terms of the Employee Proprietary Information and Inventions Agreement referred to in Section 5(b), this shall not preclude Executive from devoting time to personal and family investments or serving on community and civic boards, or participating in industry associations, provided such activities do not interfere with her duties to the Company, as determined in good faith by the CEO. Executive agrees that she will not join any boards, other than community and civic boards (which do not interfere with her duties to the Company), without the prior approval of the CEO.

3. Compensation and Benefits. The Company shall pay or provide, as the case may be, to Executive the compensation and other benefits and rights set forth in this Section 3.

a. Base Salary. The Company shall pay to Executive a base salary of $435,000 per year, payable in accordance with the Company's usual pay practices (and in any event no less frequently than monthly). Executive's base salary shall be subject to review annually by and at the sole discretion of the Compensation Committee of the Board or its designee.

b. Bonus. In addition to the base salary, Executive shall be eligible to earn, for each fiscal year of the Company ending during the term of Executive's employment with the Company an annual cash performance bonus (an "Annual Bonus") under the Company's bonus plan or plans applicable to senior executives. For each year during the term of this Agreement, Executive's target Annual Bonus shall be 45% of her base salary actually paid for such year. Executive's actual Annual Bonus shall be determined on the basis of Executive's and/or the Company's attainment of financial or other performance criteria established by the Board, or the Compensation Committee thereof, in accordance with the terms and conditions of such bonus plan(s). Except as otherwise provided in Section 4(b), Executive must be employed by the Company on the date of payment of such Annual Bonus in order to be eligible to receive such Annual Bonus.

c. Benefits.

i. During the term of Executive's employment, the Company will pay to Executive a taxable monthly payment equal to the monthly premium Executive pays for healthcare coverage under Medicare, in an amount not to exceed $2,000 per month. Executive shall be solely responsible for all matters relating to her Medicare coverage, including, without limitation, her timely payment of premiums.

ii. Executive shall be entitled to participate in benefits under the Company's other benefit plans and arrangements, including, without limitation, any employee benefit plan or arrangement made available in the future by the Company to its senior executives, subject to and on a basis consistent with the terms, conditions and overall administration of such plans and arrangements. The Company shall have the right to amend or delete any such benefit plan or arrangement made available by the Company to its senior executives and not otherwise specifically provided for herein.

d. Expenses. The Company shall reimburse Executive for reasonable out-of-pocket business expenses incurred in connection with the performance of her duties hereunder, subject to (i) such policies as the Company may from time to time establish, and (ii) Executive furnishing the Company with evidence in the form of receipts satisfactory to the Company substantiating the claimed expenditures, (iii) Executive receiving advance approval from the CEO in the case of expenses for travel outside of North America, and (iv) Executive receiving advance approval from the CEO in the case of expenses (or a series of related expenses) in excess of $10,000.

e. Paid Time Off. Executive shall be entitled to such periods of paid time off ("PTO") each year as provided from time to time under the Company's PTO policy and as otherwise provided for senior executive officers; provided that Executive shall be entitled to accrue at least four (4) weeks of PTO per year.

f. Equity Plans.

i. Executive will remain eligible to receive Stock Awards covering the Company's common stock under the equity plans maintained by the Company.

ii. Executive shall be entitled to participate in any equity or other employee benefit plan that is generally available to senior executive officers, as distinguished from general management, of the Company. Except as otherwise provided in this Agreement, Executive's participation in and benefits under any such plan shall be on the terms and subject to the conditions specified in the governing document of the particular plan.

g. Stock Award Acceleration. The vesting and exercisability of one hundred percent (100%) of Executive's outstanding Stock Awards shall be automatically accelerated in the event of Executive's Involuntary Termination within three (3) months prior to or within twelve (12) months following the date of a Change of Control, which acceleration shall occur on the later of (i) the date of such Involuntary Termination or (ii) the date of such Change of Control. In addition, Executive's Stock Awards shall remain exercisable by Executive (or Executive's legal guardian or legal representative) until the later of (A) twelve (12) months following the date of such Separation from Service, (B) with respect to any portion of the Stock Awards that become exercisable on the date of a Change of Control pursuant to this Section 3(g), twelve (12) months after the date of the Change of Control, or (C) such longer period as may be specified in the applicable Stock Award Agreement; provided, however, that in no event shall any Stock Award remain exercisable beyond the original outside expiration date of such Stock Award. The foregoing provisions are hereby deemed to be a part of each Stock Award and to supersede any less favorable provision in any agreement or plan regarding such Stock Award.

4. Separation from Service and Severance. Executive shall be entitled to receive benefits upon Separation from Service only as set forth in this Section 4:

(a) At-Will Employment; Termination. The Company and Executive acknowledge that Executive's employment is and shall continue to be at-will, as defined under applicable law, and that Executive's employment with the Company may be terminated by either party at any time for any or no reason, with or without notice. In the event of Executive's termination of employment for any reason, Executive shall be entitled to receive Executive's fully earned but unpaid base salary, when due, through the date of Executive's termination at the rate then in effect, plus all other amounts to which Executive is entitled under any compensation plan or practice of the Company at the time of Executive's termination. If Executive's employment terminates for any reason, Executive

shall not be entitled to any other payments, benefits, damages, awards or compensation other than as provided in this Agreement. Executive's employment under this Agreement shall be terminated immediately on the death of Executive.

(b) Severance Upon Involuntary Termination. In the event of Executive's Involuntarily Termination, subject to Sections 4(d) and 9(o) and Executive's continued compliance with Section 5, Executive shall be entitled to receive, in addition to the accrued compensation described in Section 4(a) and in lieu of any severance benefits to which Executive may otherwise be entitled under any severance plan or program of the Company (other than as provided in Section 3(g) of this Agreement), the benefits provided below:

(i) Executive shall be entitled to receive a lump sum cash payment equal to Executive's monthly base salary as in effect immediately prior to the date of Executive's Involuntary Termination for a period of nine (9) months following the date of Executive's Involuntary Termination, payable within ten (10) days following the date on which Executive's Release (as defined below) becomes effective and irrevocable in accordance with Section 4(d) below; provided, however, that if Executive's Involuntary Termination occurs within twenty-four (24) months following a Change of Control, the foregoing reference to nine (9) months shall be increased to twenty-four (24) months;

(ii) if Executive's Involuntary Termination occurs within twenty-four (24) months following a Change of Control, Executive shall be entitled to receive a lump sum cash payment equal to two (2) times Executive's Bonus for the year in which Executive's Involuntary Termination occurs; and

(iii) for the period beginning on the date of Executive's Separation from Service and ending on the date which is nine (9) full months following the date of Executive's Separation from Service (or, if earlier, the date Executive accepts other employment), the Company shall pay to Executive a taxable monthly payment equal to the monthly premium Executive paid for healthcare coverage under Medicare immediately prior to Executive's termination of employment, in an amount not to exceed $2,000 per month. Executive shall be solely responsible for all matters relating to her Medicare coverage, including, without limitation, her timely payment of premiums; provided, however, that if Executive's Involuntary Termination occurs within twenty-four (24) months following a Change of Control, the foregoing reference to nine (9) months shall be increased to twenty-four (24) months.

(c) Termination for Cause, Voluntary Resignation Without Good Reason, Death or Permanent Disability. If Executive's employment is terminated by the Company for Cause or by Executive without Good Reason, or as a result of Executive's death or discharge by the Company following Executive's Permanent Disability, the Company shall not have any other or further obligations to Executive under this Agreement (including any financial obligations) except that Executive shall be entitled to receive (i) Executive's fully earned but unpaid base salary, through the date of termination at the rate then in effect, and (ii) all other amounts or benefits to which Executive is entitled under any compensation, retirement or benefit plan or practice of the Company at the time of termination in accordance with the terms of such plans or practices, including, without limitation, any continuation of benefits required by COBRA or applicable law. In addition, if Executive's employment is terminated by the Company for Cause or by Executive without Good Reason, or as a result of Executive's death or discharge by the Company following Executive's Permanent Disability, all vesting of Executive's unvested Stock Awards previously granted to her by the Company shall cease and none of such unvested Stock Awards shall be exercisable following the date of such termination. The foregoing shall be in addition to, and not in lieu of, any and all other rights and remedies which may be available to the Company under the circumstances, whether at law or in equity.

(d) Release. As a condition to Executive's receipt of any post-termination benefits described in this Agreement (other than Section 4(a)), Executive shall execute and not revoke a general release of all claims in favor of the Company (the "Release") in the form attached hereto as Exhibit A. Such Release shall specifically relate to all of Executive's rights and claims in existence at the time of such execution, including any claims related to Executive's employment by the Company and her termination of employment, and shall exclude any continuing obligations the Company may have to Executive following the date of termination under this Agreement or any other agreement providing for obligations to survive Executive's termination of employment. In the event Executive's Release does not become effective within the fifty-five (55) day period following the date of Executive's Separation from Service, Executive shall not be entitled to any payments and benefits described in Section 4, other than those payable under Section 4(a).

(e) Exclusive Remedy. Except as otherwise expressly required by law (e.g., COBRA) or as specifically provided herein, all of Executive's rights to salary, severance, benefits, bonuses and other amounts hereunder (if any) accruing after the termination of Executive's employment shall cease upon such termination. In the event of a termination of Executive's employment with the Company, Executive's sole remedy shall be to receive the payments and benefits described in this Section 4. In addition, Executive acknowledges and agrees that she is not entitled to any reimbursement by the Company for any taxes payable by Executive as a result of the payments and benefits received by Executive pursuant to this Section 4, including, without limitation, any excise tax imposed by Section 4999 of the Code.

(f) Mitigation. The amount of any payment or benefit provided for in this Section 4 shall be reduced by any compensation earned by Executive as the result of employment by another employer or self-employment and, as provided in Section 4(b), Executive's (or her dependents') right to continued healthcare and life insurance benefits following her termination of employment will terminate on the date on which the applicable continuation period under COBRA expires. In addition, loans, advances or other amounts owed by Executive to the Company may be offset by the Company against amounts payable to Executive under this Section

4. Executive shall use her reasonable best efforts to obtain other employment following the date of termination.

(g) Return of the Company's Property. If Executive's employment is terminated for any reason, the Company shall have the right, at its option, to require Executive to vacate her offices prior to or on the effective date of termination and to cease all activities on the Company's behalf. Upon the termination of her employment in any manner, as a condition to the Executive's receipt of any post-termination benefits described in this Agreement, Executive shall immediately surrender to the Company all lists, books and records of, or in connection with, the Company's business, and all other property belonging to the Company, it being distinctly understood that all such lists, books and records, and other documents, are the property of the Company. Executive shall deliver to the Company a signed statement certifying compliance with this Section 4(g) prior to the receipt of any post-termination benefits described in this Agreement.

(h) Waiver of the Company's Liability. Executive recognizes that her employment is subject to termination with or without Cause for any reason and therefore Executive agrees that Executive shall hold the Company harmless from and against any and all liabilities, losses, damages, costs and expenses, including but not limited to, court costs and reasonable attorneys' fees, which Executive may incur as a result of the termination of Executive's employment. Executive further agrees that Executive shall bring no claim or cause of action against the Company for damages or injunctive relief based on a wrongful termination of employment. Executive agrees that the sole liability of the Company to Executive upon termination of this Agreement shall be that determined by this Section 4. In the event this covenant is more restrictive than permitted by laws of the jurisdiction in which the Company seeks enforcement thereof, this covenant shall be limited to the extent permitted by law.

5. Certain Covenants.

1.1.1. Noncompetition. Except as may otherwise be approved by the Board, during the term of Executive's employment, Executive shall not have any ownership interest (of record or beneficial) in, or have any interest as an employee, salesman, consultant, officer or director in, or otherwise aid or assist in any manner, any firm, corporation, partnership, proprietorship or other business that engages in any county, city or part thereof in the United States and/or any foreign country in a business which competes directly or indirectly (as determined by the Board) with the Company's business in such county, city or part thereof, so long as the Company, or any successor in interest of the Company to the business and goodwill of the Company, remains engaged in such business in such county, city or part thereof or continues to solicit customers or potential customers therein; provided, however, that Executive may own, directly or indirectly, solely as an investment, securities of any entity which are traded on any national securities exchange if Executive (x) is not a controlling person of, or a member of a group which controls, such entity; or (y) does not, directly or indirectly, own one percent (1%) or more of any class of securities of any such entity.

1.1.2. Confidential Information. Executive and the Company have entered into the Company's standard employee proprietary information and inventions agreement (the "Employee Proprietary Information and Inventions Agreement"). Executive agrees to perform each and every obligation of Executive therein contained.

1.1.3. Solicitation of Employees. Executive shall not during the term of Executive's employment and for the applicable severance period for which Executive receives severance benefits following any termination hereof pursuant to Section 4(b) above (regardless of whether Executive receives such severance benefits in a lump sum payment or over the length of the severance period) (the "Restricted Period"), directly or indirectly, solicit or encourage to leave the employment of the Company or any of its affiliates, any employee of the Company or any of its affiliates.

1.1.4. Solicitation of Consultants. Executive shall not during the term of Executive's employment and for the Restricted Period, directly or indirectly, hire, solicit or encourage to cease work with the Company or any of its affiliates any consultant then under contract with the Company or any of its affiliates within one year of the termination of such consultant's engagement by the Company or any of its affiliates.

1.1.5. Rights and Remedies Upon Breach. If Executive breaches or threatens to commit a breach of any of the provisions of this Section 5 (the "Restrictive Covenants"), the Company shall have the following rights and remedies, each of which rights and remedies shall be independent of the other and severally enforceable, and all of which rights and remedies shall be in addition to, and not in lieu of, any other rights and remedies available to the Company under law or in equity:

i. Specific Performance. The right and remedy to have the Restrictive Covenants specifically enforced by any court having equity jurisdiction, all without the need to post a bond or any other security or to prove any amount of actual damage or that money damages would not provide an adequate remedy, it being acknowledged and agreed that any such breach or threatened breach will cause irreparable injury to the Company and that money damages will not provide adequate remedy to the Company;

ii. Accounting and Indemnification. The right and remedy to require Executive (i) to account for and pay over to the Company all compensation, profits, monies, accruals, increments or other benefits derived or received by Executive or any associated party deriving such benefits as a result of any such breach of the Restrictive Covenants; and (ii) to indemnify the

Company against any other losses, damages (including special and consequential damages), costs and expenses, including actual attorneys' fees and court costs, which may be incurred by them and which result from or arise out of any such breach or threatened breach of the Restrictive Covenants; and

iii. Cessation of Payments. The right to cease all severance payments to Executive hereunder.

(f) Severability of Covenants/Blue Pencilling. If any court determines that any of the Restrictive Covenants, or any part thereof, is invalid or unenforceable, the remainder of the Restrictive Covenants shall not thereby be affected and shall be given full effect, without regard to the invalid portions. If any court determines that any of the Restrictive Covenants, or any part thereof, are unenforceable because of the duration of such provision or the area covered thereby, such court shall have the power to reduce the duration or area of such provision and, in its reduced form, such provision shall then be enforceable and shall be enforced. Executive hereby waives any and all right to attack the validity of the Restrictive Covenants on the grounds of the breadth of their geographic scope or the length of their term.

(g) Enforceability in Jurisdictions. The Company and Executive intend to and do hereby confer jurisdiction to enforce the Restrictive Covenants upon the courts of any jurisdiction within the geographical scope of such covenants. If the courts of any one or more of such jurisdictions hold the Restrictive Covenants wholly unenforceable by reason of the breadth of such scope or otherwise, it is the intention of the Company and Executive that such determination not bar or in any way affect the right of the Company to the relief provided above in the courts of any other jurisdiction within the geographical scope of such covenants, as to breaches of such covenants in such other respective jurisdictions, such covenants as they relate to each jurisdiction being, for this purpose, severable into diverse and independent covenants.

(h) Definitions. For purposes of this Section 5, the term "Company" means not only Evoke Pharma, Inc., but also any company, partnership or entity which, directly or indirectly, controls, is controlled by or is under common control with Evoke Pharma, Inc.

(g) Other Protections. Executive acknowledges that the Company has provided her with the following notice of immunity rights in compliance with the requirements of the Defend Trade Secrets Act: (i) Executive shall not be held criminally or civilly liable under any Federal or State trade secret law for the disclosure of confidential information that is made in confidence to a Federal, State, or local government official or to an attorney solely for the purpose of reporting or investigating a suspected violation of law; (ii) Executive shall not be held criminally or civilly liable under any Federal or State trade secret law for the disclosure of confidential information that is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal; and (iii) if Executive files a lawsuit for retaliation by the Company for reporting a suspected violation of law, Executive may disclose the confidential information to her attorney and use the confidential information in the court proceeding, if Executive files any document containing the confidential information under seal, and do not disclose the confidential information, except pursuant to court order. In addition, nothing in this Agreement or the Employee Proprietary Information and Inventions Agreement shall prevent Executive from (x) communicating directly with, cooperating with, or providing information to, or receiving financial awards from, any federal, state or local government agency, including without limitation the U.S. Securities and Exchange Commission, the U.S. Commodity Futures Trading Commission, the U.S. Department of Justice, the U.S. Equal Employment Opportunity Commission, or the U.S. National Labor Relations Board, without notifying or seeking permission from the Company, (y) exercising any rights Executive may have under Section 7 of the U.S. National Labor Relations Act, such as the right to engage in concerted activity, including collective action or discussion concerning wages or working conditions, or (z) discussing or disclosing information about unlawful acts in the workplace, such as harassment or discrimination based on a protected characteristic or any other conduct that Executive has reason to believe is unlawful.

6. Insurance. The Company shall have the right to take out life, health, accident, "key-man" or other insurance covering Executive, in the name of the Company and at the Company's expense in any amount deemed appropriate by the Company. Executive shall assist the Company in obtaining such insurance, including, without limitation, submitting to any required examinations and providing information and data required by insurance companies.

7. Arbitration. Any dispute, claim or controversy based on, arising out of or relating to Executive's employment or this Agreement shall be settled by final and binding arbitration in San Diego, California, before a single neutral arbitrator in accordance with the National Rules for the Resolution of Employment Disputes (the "Rules") of the American Arbitration Association, and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction. The Rules may be found online at www.adr.org or are available upon request to the Company. Arbitration may be compelled pursuant to the California Arbitration Act (Code of Civil Procedure §§ 1280 et seq.). If the parties are unable to agree upon an arbitrator, one shall be appointed by the AAA in accordance with its Rules. Each party shall pay the fees of its own attorneys, the expenses of its witnesses and all other expenses connected with presenting its case; however, Executive and the Company agree that, to the extent permitted by law, the arbitrator may, in his or her discretion, award reasonable attorneys' fees to the prevailing party; provided, further, that the prevailing party shall be reimbursed for such fees, costs and expenses within forty-five (45) days following any such award, but in no event later than the last day of the Executive's taxable year following the taxable year in which the fees, costs and expenses were incurred; provided, further, that the parties' obligations pursuant to this sentence shall terminate on the tenth (10^{th}) anniversary of the date of Executive's termination of employment. Other costs of the

arbitration, including the cost of any record or transcripts of the arbitration, AAA's administrative fees, the fee of the arbitrator, and all other fees and costs, shall be borne by the Company. This Section 7 is intended to be the exclusive method for resolving any and all claims by the parties against each other for payment of damages under this Agreement or relating to Executive's employment; provided, however, that Executive shall retain the right to file administrative charges with or seek relief through any government agency of competent jurisdiction, and to participate in any government investigation, including but not limited to (i) claims for workers' compensation, state disability insurance or unemployment insurance; (ii) claims for unpaid wages or waiting time penalties brought before the California Division of Labor Standards Enforcement; provided, however, that any appeal from an award or from denial of an award of wages and/or waiting time penalties shall be arbitrated pursuant to the terms of this Agreement; and (iii) claims for administrative relief from the United States Equal Employment Opportunity Commission and/or the California Department of Fair Employment and Housing (or any similar agency in any applicable jurisdiction other than California); provided, further, that Executive shall not be entitled to obtain any monetary relief through such agencies other than workers' compensation benefits or unemployment insurance benefits. This Agreement shall not limit either party's right to obtain any provisional remedy, including, without limitation, injunctive or similar relief, from any court of competent jurisdiction as may be necessary to protect their rights and interests pending the outcome of arbitration, including without limitation injunctive relief, in any court of competent jurisdiction pursuant to California Code of Civil Procedure § 1281.8 or any similar statute of an applicable jurisdiction. Seeking any such relief shall not be deemed to be a waiver of such party's right to compel arbitration. Both Executive and the Company expressly waive their right to a jury trial.

8. General Relationship. Executive shall be considered an employee of the Company within the meaning of all federal, state and local laws and regulations including, but not limited to, laws and regulations governing unemployment insurance, workers' compensation, industrial accident, labor and taxes.

9. Miscellaneous.

(a) Modification; Prior Claims. This Agreement, together with the Employee Proprietary Information and Inventions Agreement, set forth the entire understanding of the parties with respect to the subject matter hereof, supersedes all existing agreements, including the Prior Agreement, between them concerning such subject matter, and may be modified only by a written instrument duly executed by each party.

(b) Assignment; Assumption by Successor. The rights of the Company under this Agreement may, without the consent of Executive, be assigned by the Company, in its sole and unfettered discretion, to any person, firm, corporation or other business entity which at any time, whether by purchase, merger or otherwise, directly or indirectly, acquires all or substantially all of the assets or business of the Company. The Company will require any successor (whether direct or indirect, by purchase, merger or otherwise) to all or substantially all of the business or assets of the Company expressly to assume and to agree to perform this Agreement in the same manner and to the same extent that the Company would be required to perform it if no such succession had taken place; provided, however, that no such assumption shall relieve the Company of its obligations hereunder. As used in this Agreement, the "Company" shall mean the Company as hereinbefore defined and any successor to its business and/or assets as aforesaid which assumes and agrees to perform this Agreement by operation of law or otherwise.

(c) Survival. The covenants, agreements, representations and warranties contained in or made in Sections 3(g), 4, 5, 7 and 9 of this Agreement shall survive any termination of Executive's employment.

(d) Third-Party Beneficiaries. This Agreement does not create, and shall not be construed as creating, any rights enforceable by any person not a party to this Agreement.

(e) Waiver. The failure of either party hereto at any time to enforce performance by the other party of any provision of this Agreement shall in no way affect such party's rights thereafter to enforce the same, nor shall the waiver by either party of any breach of any provision hereof be deemed to be a waiver by such party of any other breach of the same or any other provision hereof.

(f) Section Headings. The headings of the several sections in this Agreement are inserted solely for the convenience of the parties and are not a part of and are not intended to govern, limit or aid in the construction of any term or provision hereof.

(g) Notices. Any notice required or permitted by this Agreement shall be in writing and shall be delivered as follows with notice deemed given as indicated: (i) by personal delivery when delivered personally; (ii) by overnight courier upon written verification of receipt; (iii) by email, telecopy or facsimile transmission upon acknowledgment of receipt of electronic transmission; or (iv) by certified or registered mail, return receipt requested, upon verification of receipt. Notice shall be sent to Executive at the address listed on the Company's personnel records and to the Company at its principal place of business, or such other address as either party may specify in writing.

(h) Severability. All Sections, clauses and covenants contained in this Agreement are severable, and in the event any of them shall be held to be invalid by any court, this Agreement shall be interpreted as if such invalid Sections, clauses or covenants were not contained herein.

(i) Governing Law and Venue. This Agreement is to be governed by and construed in accordance with the laws of the State of California applicable to contracts made and to be performed wholly within such State, and without regard to the conflicts of laws principles thereof. Except as provided in Sections 5 and 7, any suit brought hereon shall be brought in the state or federal courts sitting in San Diego, California, the parties hereto hereby waiving any claim or defense that such forum is not convenient or proper. Each party hereby agrees that any such court shall have in personam jurisdiction over it and consents to service of process in any manner authorized by California law.

(j) Non-transferability of Interest. None of the rights of Executive to receive any form of compensation payable pursuant to this Agreement shall be assignable or transferable except through a testamentary disposition or by the laws of descent and distribution upon the death of Executive. Any attempted assignment, transfer, conveyance, or other disposition (other than as aforesaid) of any interest in the rights of Executive to receive any form of compensation to be made by the Company pursuant to this Agreement shall be void.

(k) Gender. Where the context so requires, the use of the masculine gender shall include the feminine and/or neuter genders and the singular shall include the plural, and vice versa, and the word "person" shall include any corporation, firm, partnership or other form of association.

(l) Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement.

(m) Construction. The language in all parts of this Agreement shall in all cases be construed simply, according to its fair meaning, and not strictly for or against any of the parties hereto. Without limitation, there shall be no presumption against any party on the ground that such party was responsible for drafting this Agreement or any part thereof.

(n) Withholding and other Deductions. All compensation payable to Executive hereunder shall be subject to such deductions as the Company is from time to time required to make pursuant to law, governmental regulation or order.

(o) Code Section 409A.

(i) This Agreement is not intended to provide for any deferral of compensation subject to Section 409A of the Code, and, accordingly, the post-termination payments payable under Section 4(b) shall be paid no later than the later of: (A) the fifteenth (15th) day of the third month following Executive's first taxable year in which such severance benefit is no longer subject to a substantial risk of forfeiture, and (B) the fifteenth (15th) day of the third month following first taxable year of the Company in which such severance benefit is no longer subject to substantial risk of forfeiture, as determined in accordance with Code Section 409A and any Treasury Regulations and other guidance issued thereunder. To the extent applicable, this Agreement shall be interpreted in accordance with Code Section 409A and Department of Treasury regulations and other interpretive guidance issued thereunder. Each series of installment payments made under this Agreement is hereby designated as a series of "separate payments" within the meaning of Section 409A of the Code.

(ii) If the Executive is a "specified employee" (as defined in Section 409A of the Code), as determined by the Company in accordance with Section 409A of the Code, on the date of the Executive's Separation from Service, to the extent that the payments or benefits under this Agreement are subject to Section 409A of the Code and the delayed payment or distribution of all or any portion of such amounts to which Executive is entitled under this Agreement is required in order to avoid a prohibited distribution under Section 409A(a)(2)(B)(i) of the Code, then such portion deferred pursuant to this Section 10(o)(ii) shall be paid or distributed to Executive in a lump sum on the earlier of (A) the date that is six (6) months following Executive's Separation from Service, (B) the date of Executive's death or (C) the earliest date as is permitted under Section 409A of the Code. Any remaining payments due under the Agreement shall be paid as otherwise provided herein.

(iii) To the extent applicable, this Agreement shall be interpreted in accordance with the applicable exemptions from Section 409A of the Code. If Executive and the Company determine that any payments or benefits payable under this Agreement intended to comply with Sections 409A(a)(2), (3) and (4) of the Code do not comply with Section 409A of the Code, Executive and the Company agree to amend this Agreement, or take such other actions as Executive and the Company deem reasonably necessary or appropriate, to comply with the requirements of Section 409A of the Code and the Treasury Regulations thereunder (and any applicable transition relief) while preserving the economic agreement of the parties. To the extent that any provision in this Agreement is ambiguous as to its compliance with Section 409A of the Code, the provision shall be read in such a manner that no payments payable under this Agreement shall be subject to an "additional tax" as defined in Section 409A(a)(1)(B) of the Code.

iv. Any reimbursement of expenses or in-kind benefits payable under this Agreement shall be made in

accordance with Treasury Regulation Section 1.409A-3(i)(1)(iv) and shall be paid on or before the last day of Executive's taxable year following the taxable year in which Executive incurred the expenses. The amount of expenses reimbursed or in-kind benefits payable in one year shall not affect the amount eligible for reimbursement or in-kind benefits payable in any other taxable year of Executive's, and Executive's right to reimbursement for such amounts shall not be subject to liquidation or exchange for any other benefit.

v. In the event that the amounts payable under Section 4(b) are subject to Section 409A of the Code and the timing of the delivery of Executive's Release could cause such amounts to be paid in one or another taxable year, then notwithstanding the payment timing set forth in such Section, such amounts shall not be payable until the later of (i) the payment date specified in such section or (ii) the first business day of the taxable year following the Executive's Separation from Service.

(Signature Page Follows)

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first set forth above.

EVOKE PHARMA, INC.

By: /s/ Matthew J. D'Onofrio
Name: Matthew J. D'Onofrio
Title: Chief Executive Officer

/s/ Marilyn Carlson, M.D.
Marilyn Carlson, M.D.

EXHIBIT A

GENERAL RELEASE OF CLAIMS

[*The language in this Release may change based on legal developments and evolving best practices; this form is provided as an example of what will be included in the final Release document.*]

This General Release of Claims ("Release") is entered into as of this _____ day of _____, ____, between Marilyn Carlson, M.D. ("Executive"), and Evoke Pharma, Inc., a Delaware corporation (the "Company") (collectively referred to herein as the "Parties").

WHEREAS, Executive and the Company are parties to that certain Amended and Restated Employment Agreement dated as of August 8, 2024 (the "Agreement");

WHEREAS, the Parties agree that Executive is entitled to certain severance benefits under the Agreement, subject to Executive's execution of this Release; and

WHEREAS, the Company and Executive now wish to fully and finally to resolve all matters between them.

NOW, THEREFORE, in consideration of, and subject to, the severance benefits payable to Executive pursuant to the Agreement, the adequacy of which is hereby acknowledged by Executive, and which Executive acknowledges that she would not otherwise be entitled to receive, Executive and the Company hereby agree as follows:

1. General Release of Claims by Executive.

(a) Executive, on behalf of herself and her executors, heirs, administrators, representatives and assigns, hereby agrees to release and forever discharge the Company and all predecessors, successors and their respective parent corporations, affiliates, related, and/or subsidiary entities, and all of their past and present investors, directors, shareholders, officers, general or limited partners, employees, attorneys, agents and representatives, and the employee benefit plans in which Executive is or has been a participant by virtue of her employment with or service to the Company (collectively, the "Company Releasees"), from any and all claims, debts, demands, accounts, judgments, rights, causes of action, equitable relief, damages, costs, charges, complaints, obligations, promises, agreements, controversies, suits, expenses, compensation, responsibility and liability of every kind and character whatsoever (including attorneys' fees and costs), whether in law or equity, known or unknown, asserted or unasserted, suspected or unsuspected (collectively, "Claims"), which Executive has or may have had against such entities based on any events or circumstances arising or occurring on or prior to the date hereof or on or prior to the date hereof, arising directly or indirectly out of, relating to, or in any other way involving in any manner whatsoever Executive's employment by or service to the Company or the termination thereof, including any and all claims arising under federal, state, or local laws relating to employment, including without limitation claims of wrongful discharge, breach of express or implied contract, fraud, misrepresentation, defamation, or liability in tort, and claims of any kind that may be brought in any court or administrative agency including, without limitation, claims under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. Section 2000, et seq.; the Americans with Disabilities Act, as amended, 42 U.S.C. § 12101 etseq.; the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 701 et seq.; the Civil Rights Act of 1866, and the Civil Rights Act of 1991; 42 U.S.C. Section 1981, et seq.; the Age Discrimination in Employment Act, as amended, 29 U.S.C. Section 621, et seq. (the "ADEA"); the Equal Pay Act, as amended, 29 U.S.C. Section 206(d); regulations of the Office of Federal Contract Compliance, 41 C.F.R. Section 60,et seq.; the Family and Medical Leave Act, as amended, 29 U.S.C. § 2601 et seq.; the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. § 201 et seq.; the Employee Retirement Income Security Act, as amended, 29 U.S.C. § 1001 etseq.; and the California Fair Employment and Housing Act, California Government Code Section 12940, et seq.

Notwithstanding the generality of the foregoing, Executive does not release the following claims:

(i) Claims for unemployment compensation or any state disability insurance benefits pursuant to the terms of applicable state law;

(ii) Claims for workers' compensation insurance benefits under the terms of any worker's compensation insurance policy or fund of the Company;

(iii) Claims pursuant to the terms and conditions of the federal law known as COBRA;

(iv) Claims for indemnity under the bylaws of the Company, as provided for by California law or under any applicable insurance policy with respect to Executive's liability as an employee, director or officer of the Company;

(v) Claims based on any right Executive may have to enforce the Company's executory obligations under the Agreement; and

(vi) Claims Executive may have to vested or earned compensation and benefits.

(b) EXECUTIVE ACKNOWLEDGES THAT SHE HAS BEEN ADVISED OF AND IS FAMILIAR WITH THE PROVISIONS OF CALIFORNIA CIVIL CODE SECTION 1542, WHICH PROVIDES AS FOLLOWS:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH, IF KNOWN BY HIM OR HER, MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR."

BEING AWARE OF SAID CODE SECTION, EXECUTIVE HEREBY EXPRESSLY WAIVES ANY RIGHTS SHE MAY HAVE THEREUNDER, AS WELL AS UNDER ANY OTHER STATUTES OR COMMON LAW PRINCIPLES OF SIMILAR EFFECT.

(c) Executive acknowledges that this Release was presented to her on the date indicated above and that Executive is entitled to have [twenty-one (21)][forty-five (45)] days' time in which to consider it. Executive further acknowledges that the Company has advised her that she is waiving her rights under the ADEA, and that Executive should consult with an attorney of her choice before signing this Release, and Executive has had sufficient time to consider the terms of this Release. Executive represents and acknowledges that if Executive executes this Release before [twenty-one (21)][forty-five (45)] days have elapsed, Executive does so knowingly, voluntarily, and upon the advice and with the approval of Executive's legal counsel (if any), and that Executive voluntarily waives any remaining consideration period.

(d) Executive understands that after executing this Release, Executive has the right to revoke it within seven (7) days after her execution of it. Executive understands that this Release will not become effective and enforceable unless the seven (7) day revocation period passes and Executive does not revoke the Release in writing. Executive understands that this Release may not be revoked after the seven (7) day revocation period has passed. Executive also understands that any revocation of this Release must be made in writing and delivered to the Company at its principal place of business within the seven (7) day period.

(e) Executive understands that this Release shall become effective, irrevocable, and binding upon Executive on the eighth (8 th) day after her execution of it, so long as Executive has not revoked it within the time period and in the manner specified in clause (d) above.

(f) Executive further understands that Executive will not be given any severance benefits under the Agreement unless this Release is effective on or before the date that is fifty-five (55) days following the date of Executive's termination of employment.

2. No Assignment. Executive represents and warrants to the Company Releasees that there has been no assignment or other transfer of any interest in any Claim that Executive may have against the Company Releasees. Executive agrees to indemnify and hold harmless the Company Releasees from any liability, claims, demands, damages, costs, expenses and attorneys' fees incurred as a result of any such assignment or transfer from Executive.

3. Severability. In the event any provision of this Release is found to be unenforceable by an arbitrator or court of competent jurisdiction, such provision shall be deemed modified to the extent necessary to allow enforceability of the provision as so limited, it being intended that the parties shall receive the benefit contemplated herein to the fullest extent permitted by law. If a deemed modification is not satisfactory in the judgment of such arbitrator or court, the unenforceable provision shall be deemed deleted, and the validity and enforceability of the remaining provisions shall not be affected thereby.

4. Interpretation; Construction. The headings set forth in this Release are for convenience only and shall not be used in interpreting this Agreement. This Release has been drafted by legal counsel representing the Company, but Executive has participated in the negotiation of its terms. Furthermore, Executive acknowledges that Executive has had an opportunity to review and revise the Release and have it reviewed by legal counsel, if desired, and, therefore, the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Release. Either party's failure to enforce any provision of this Release shall not in any way be construed as a waiver of any such provision, or prevent that party thereafter from enforcing each and every other provision of this Release.

5. Governing Law and Venue. This Release will be governed by and construed in accordance with the laws of the United States of America and the State of California applicable to contracts made and to be performed wholly within such State, and without regard to the conflicts of laws principles thereof. Any suit brought hereon shall be brought in the state or federal courts sitting in San Diego County, California, the Parties hereby waiving any claim or defense that such forum is not convenient or proper. Each party hereby agrees that any such court shall have in personam jurisdiction over it and consents to service of process in any manner authorized by California law.

6. Entire Agreement. This Release and the Agreement constitute the entire agreement of the Parties in respect of the subject matter contained herein and therein and supersede all prior or simultaneous representations, discussions, negotiations and

agreements, whether written or oral. This Release may be amended or modified only with the written consent of Executive and an authorized representative of the Company. No oral waiver, amendment or modification will be effective under any circumstances whatsoever.

7. Counterparts. This Release may be executed in multiple counterparts, each of which shall be deemed to be an original but all of which together shall constitute one and the same instrument.

(Signature Page Follows)

IN WITNESS WHEREOF, and intending to be legally bound, the Parties have executed the foregoing Release as of the date first written above.

EXECUTIVE

/s/ Marilyn Carlson, M.D.

Print Name: Marilyn Carlson, M.D.

EVOKE PHARMA, INC.

By: /s/ Matthew J. D'Onofrio

Print Name: Matthew J. D'Onofrio

Title: Chief Executive Officer

Exhibit 10.4

SEVENTH AMENDMENT TO LEASE

This Seventh Amendment to Lease (this "Amendment") is made, for reference purposes only, _____, by and between SB CORPORATE CENTRE III-IV, LLC, a Delaware limited liability company ("Landlord"), and EVOKE PHARMA, INC., a Delaware corporation ("Tenant"), with reference to the following facts:

RECITALS

1. Landlord and Tenant are parties to that certain Office Lease Agreement dated as of December 19, 2016, as amended by that certain First Amendment to Lease dated as of September 27, 2018, as further amended by that certain Second Amendment to Lease dated as of December 6, 2019, as further amended by that certain Third Amendment to Lease dated as of December 15, 2020, as further amended by that certain Fourth Amendment to Lease dated as of February 3, 2022, as further amended by that certain Fifth Amendment to Lease dated as of August 24, 2022, as further amended by that certain Sixth Amendment to Lease dated as of October 9, 2023 (collectively, as amended, the "Lease") for that certain premises located at 420 Stevens Avenue, Suite 230, Solana Beach, California 92075, consisting of approximately 1,451 Rentable Square Feet of commercial office space (the "Premises").

2. The parties desire to amend the Lease as set forth in this Amendment.

3. All capitalized terms used in this Amendment, unless specifically defined herein, shall have the same meaning as the capitalized terms used in the Lease.

NOW, THEREFORE, for valuable consideration, the receipt and adequacy of which are expressly acknowledged, Landlord and Tenant agree as follows:

AGREEMENT

1. Extension Term. The term of the Lease for the Premises is set to expire on October 31, 2024. By virtue of this Amendment, Landlord and Tenant hereby agree that the term of the Lease for the New Premises shall be extended to and including March 31, 2027 (the "Expiration Date"), subject to the terms and conditions contained herein and the Lease. For the purposes of this Amendment, the period of time between and including the New Premises Effective Date and the Expiration Date shall be referred to herein as, the "Extension Term". Furthermore, any and all previously granted and unexercised options to extend the term of the Lease shall be null and void and of no further force or effect.

2. Rent. Tenant shall pay Basic Monthly Rent to Landlord for the Premises in advance on or before the first day of every calendar month, without any set-off or deduction, pursuant to the current rate as set forth in the Lease. However, as of the Extended Term Effective Date, Tenant's Basic Monthly Rent for the Premises shall be as follows during the Extension Term:

Basic Monthly Rent

Lease Period	Approximate Rate per RSF per Month	Actual Total per Month
11/1/2024 – 10/31/2025	$4.45	$6,456.95**
11/1/2025 – 10/31/2026	$4.58	$6,650.66
11/1/2026 – 3/31/2027	$4.72	$6,850.18

*** Tenant shall be granted a one (1) month abatement of Basic Monthly Rent which shall be allocated during the month of November 2024. As such and provided Tenant is not in material default of the Lease, Tenant shall not be required to pay Basic Monthly Rent during the month of November 2024. If Tenant is deemed in material default of the Lease (after applicable notice and cure period), Tenant shall become fully liable for all funds abated and Landlord shall be entitled to exercise all of its rights and remedies with respect to collecting the monies so abated.*

3. Operating Expenses, Tax Expenses and Insurance Expenses. Upon the Extended Term Effective Date, for the purpose of calculating Tenant's Share of Operating Expenses, Tax Expenses and Insurance Expenses for the Premises, the Lease shall be amended to provide that (i) the Base Year shall be Expense Year 2025, and (ii) the first comparison Expense Year shall be Expense Year 2026.

4. Tenant Certification. By execution of this Amendment, Tenant hereby certifies that as of the date hereof, neither Tenant nor Landlord is in default of the performance of its obligations pursuant to the Lease, and Tenant has no claim, defense, or offset with respect to the Lease.

5. Real Estate Brokers. Tenant represents and warrants to Landlord that it has not authorized or employed, or acted by implication to authorize or employ, with any real estate broker or sales person to act for it in connection with this Amendment or dealt with any real estate broker or sales person in connection with this Amendment other than RE:Align, Inc. Tenant also agrees to indemnify, defend and hold harmless Landlord from and against any and all claims by any real estate broker or salesman whom the Tenant authorized or employed, or acted by implication to authorize or employ, to act for Tenant in connection with this Amendment, or with any broker or sales person with whom Tenant dealt in connection with this Amendment other than RE:Align, Inc.

6. Confirmation. Except, as and to the extent modified by this Amendment, all provisions of the Lease shall remain in full force and effect. In the event of a conflict between the terms of the Lease and the terms of this Amendment, the terms in this Amendment shall control.

7. Counterparts. This Amendment may be executed in any number of counterparts, including counterparts transmitted by facsimile or electronic mail, each of which shall be deemed an original for all purposes, and all counterparts shall constitute one and the same instrument.

8. Electronic Signatures. Landlord and Tenant consent to the use of electronic signatures on this Amendment and all documents relating to the Lease and this Amendment, and any amendments to any of the foregoing (collectively, the "Lease Documents"). Landlord and Tenant agree that any electronic signatures appearing on the Lease Documents are the same as handwritten signatures for the purposes of validity, enforceability and admissibility, and that any electronically signed Lease Document shall, for all purposes of the Lease Documents and applicable law, be deemed to be "written" or "in writing", to have been executed, and to constitute an original written record when printed, and shall be fully admissible in any legal proceeding. For purposes hereof, "electronic signature" shall have the meaning set forth in the Uniform Electronic Transactions Act, as the same may be amended from time to time.

IN WITNESS WHEREOF, Landlord and Tenant agree to the foregoing as evidenced by affixing their signatures below.

LANDLORD:

SB CORPORATE CENRE III-IV, LLC,
a Delaware limited liability company

By: American Assets Trust Management, LLC, a Delaware limited liability company, as Agent

By: /s/ Adam Wyll
Adam Wyll
President and COO

By: /s/ Steven M. Center
Steven M. Center
S.V.P. of Office Properties

Dated: October 16, 2024

TENANT:

EVOKE PHARMA, INC.
a Delaware corporation

By: /s/ Matthew J. D'Onofrio

Name: Matthew J. D'Onofrio

Title: Chief Executive Officer

Dated: October 16, 2024

Exhibit 31.1

CERTIFICATION OF PRINCIPAL EXECUTIVE OFFICER
PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, Matthew J. D'Onofrio, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Evoke Pharma, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. I am responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

a. designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

b. designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

c. evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

d. disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

a. all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

b. any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 7, 2024

/s/ Matthew J. D'Onofrio
Matthew J. D'Onofrio
Chief Executive Officer
(Principal Executive Officer)

Exhibit 31.2

CERTIFICATION OF PRINCIPAL FINANCIAL OFFICER
PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, Mark A. Kowieski, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Evoke Pharma, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. I am responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

a. designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

b. designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

c. evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

d. disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

a. all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

b. any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 7, 2024

/s/ Mark Kowieski
Mark Kowieski
Chief Financial Officer
(Principal Financial and Accounting Officer)

Exhibit 32.1

CERTIFICATION PURSUANT TO 18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the quarterly report of Evoke Pharma, Inc. (the "Company") on Form 10-Q for the period ended September 30, 2024, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Matthew J. D'Onofrio, Chief Executive Officer of the Company, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to my knowledge:

(1) The Report fully complies with the requirements of Section 13(a) or 15(d), as applicable, of the Securities Exchange Act of 1934, as amended; and

(2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: November 7, 2024

/s/ Matthew J. D'Onofrio
Matthew J. D'Onofrio
Chief Executive Officer
(Principal Executive Officer)

The foregoing certification is being furnished solely to accompany the Report pursuant to 18 U.S.C. § 1350, and is not being filed for purposes of Section 18 of the Securities Exchange Act of 1934, as amended, and is not to be incorporated by reference into any filing of the Company, whether made before or after the date hereof, regardless of any general incorporation language in such filing. A signed original of this written statement required by Section 906 has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.

Exhibit 32.2

CERTIFICATION PURSUANT TO 18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the quarterly report of Evoke Pharma, Inc. (the "Company") on Form 10-Q for the period ended September 30, 2024, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Mark A. Kowieski, Chief Financial Officer of the Company, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to my knowledge:

(1) The Report fully complies with the requirements of Section 13(a) or 15(d), as applicable, of the Securities Exchange Act of 1934, as amended; and

(2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: November 7, 2024

/s/ Mark Kowieski
Mark Kowieski
Chief Financial Officer
(Principal Financial and Accounting Officer)

The foregoing certification is being furnished solely to accompany the Report pursuant to 18 U.S.C. § 1350, and is not being filed for purposes of Section 18 of the Securities Exchange Act of 1934, as amended, and is not to be incorporated by reference into any filing of the Company, whether made before or after the date hereof, regardless of any general incorporation language in such filing. A signed original of this written statement required by Section 906 has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.